

Presented to

The Library

of the

University of Toronto

by

Mrs. Wallace Nesbitt

from the law library

of the

Honourable Wallace Nesbitt, K.C.,

Treasurer of the Law Society

of Upper Canada

THE

LAWS OF ENGLAND.

VOLUME XII.

Law.D
H196.3

Halsbury, 1

THE

LAWS OF ENGLAND

BEING

A COMPLETE STATEMENT OF THE WHOLE LAW OF ENGLAND.

BY

THE RIGHT HONOURABLE THE

EARL OF HALSBURY

LORD HIGH CHANCELLOR OF GREAT BRITAIN,
1885-86, 1886-92, and 1895—1905,

AND OTHER LAWYERS.

VOLUME XII.

EDUCATION.
ELECTIONS.
ELECTRIC LIGHTING AND POWER.

309547 35
L
14

LONDON:

BUTTERWORTH & CO., 11 & 12, BELL YARD, TEMPLE BAR.

Law Publishers.

1910.

BRADBURY, AGNEW, & CO. LD., PRINTERS,
LONDON AND TONBRIDGE.

Editor in Chief.

THE RIGHT HONOURABLE THE

EARL OF HALSBURY,

LORD HIGH CHANCELLOR OF GREAT BRITAIN, 1885–86, 1886–92, and 1895–1905.

Revising Editors:

For Equity and Chancery Titles:

THE HON. SIR CHARLES SWINFEN EADY,

ONE OF HIS MAJESTY'S JUDGES OF THE CHANCERY DIVISION,

Assisted by

T. H. CARSON, ESQ., K.C.

For Real Property and Conveyancing Titles:

ARTHUR UNDERHILL, ESQ., M.A., LL.D.,

OF LINCOLN'S INN, BARRISTER-AT-LAW,
ONE OF THE CONVEYANCING COUNSEL OF THE COURT.

For Common Law Titles, and Practice and Procedure:

T. WILLES CHITTY, ESQ.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW,
A MASTER OF THE SUPREME COURT.

For Local Government Titles, and Licensing:

WILLIAM MACKENZIE, ESQ., M.A.,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

Managing Editor.

T. WILLES CHITTY, ESQ.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW,

A MASTER OF THE SUPREME COURT.

Assistant Managing Editor.

SIDNEY W. CLARKE, ESQ.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

Editorial Staff:

HARRY GREENWOOD, ESQ., LL.D., of Lincoln's Inn.
W. E. BALL, ESQ., LL.D., of Gray's Inn.
The HON. JOHN W. MANSFIELD, M.A., of the Inner Temple.
G. M. EDWARDES JONES, ESQ., M.A., of the Inner Temple.
HENRY WILLIAM DISNEY, ESQ., B.A., of Lincoln's Inn.
CHARLES EDWARD ALLAN, ESQ., M.A., LL.B., of the Inner Temple.
HAROLD B. BOMPAS, ESQ., M.A., of the Inner Temple.
CHARLES FREDERICK LLOYD, ESQ., of the Inner Temple.
HUBERT F. F. GREENLAND, ESQ., B.A., of Lincoln's Inn.
KENNETH E. CHALMERS, ESQ., B.A., of the Inner Temple.
A. W. BAKER WELFORD, ESQ., M.A., of Lincoln's Inn.
HUMPHREY H. KING, ESQ., B.A., LL.B., of the Inner Temple.

BARRISTERS-AT-LAW.

The Titles in this Volume have been contributed by the following gentlemen:—

TITLE.	CONTRIBUTED BY
EDUCATION . .	Sir WILLIAM R. ANSON, Bart., M.P., M.A., D.C.L., Warden of All Souls College, Oxford, late Vice-Chancellor of Oxford University, and late Parliamentary Secretary to the Board of Education; and REGINALD P. HILLS, Esq., B.A., Barrister-at-Law; assisted by C. T. CARR, Esq., LL.M., Barrister-at-Law.
ELECTIONS . .	E. A. JELF, Esq., M.A., Revising Barrister; R. S. NOLAN, Esq., B.A.; and W. G. COURTHOPE, Esq., B.A., Barristers-at-Law; together with an Introduction by the Hon. Sir ARTHUR R. JELF, one of His Majesty's Judges of the High Court.
ELECTRIC LIGHTING AND POWER.	J. H. BALFOUR BROWNE, Esq., K.C.; and the late AUSTIN FLEEMING JENKIN, Esq., Barrister-at-Law.

In this Volume the Law is stated as at 12th May, 1910.

TABLE OF CONTENTS

AND

TABLE OF CROSS-REFERENCES.

PAGE

Table of Abbreviations. - - - - - - - - - xxi

Table of Statutes - - - - - - - - - - - xxxix

Table of Cases - - - - - - - - - - - - lxxxv

EDUCATION - - - - - - - - - - - - **1—130**

PART I. INTRODUCTION - - - - - - - - - 4

PART II. CENTRAL AUTHORITIES - - - - - - - - 8

SECT. 1. The Board of Education - - - - - - - - 8

Sub-sect. 1. Constitution - - - - - - - - 8

Sub-sect. 2. Functions in General - - - - - - 9

Sub-sect. 3. Higher Education - - - - - - - 10

Sub-sect. 4. Elementary Education - - - - - - 10

Sub-sect. 5. Default of Local Education Authority - - 12

Sub-sect. 6. Educational Charities - - - - - - 13

Sub-sect. 7. Inquiries, Returns, and Reports - - - 14

SECT. 2. Other Central Authorities - - - - - - - - 14

PART III. POWERS AND DUTIES OF LOCAL EDUCATION AUTHORITIES - - - - - - - - - - - - 15

SECT. 1. Outline of System - - - - - - - - - 15

SECT. 2. Classification and Constitution - - - - - - - 17

Sub-sect. 1. Classification - - - - - - - - 17

Sub-sect. 2. Education Committees - - - - - - 19

SECT. 3. General Powers - - - - - - - - - 20

SECT. 4. Higher Education - - - - - - - - - 22

Sub-sect. 1. In General - - - - - - - - 22

Sub-sect. 2. Councils with concurrent Powers - - - 23

Sub-sect. 3. Religious Instruction - - - - - - 23

Sub-sect. 4. Provision of Schools - - - - - - - 24

SECT. 5. Elementary Education - - - - - - - - 24

Sub-sect. 1. In General - - - - - - - - 24

Sub-sect. 2. Supply of School Accommodation - - - 25

Sub-sect. 3. Provision of Schoolhouses - - - - - - 26

Sub-sect. 4. Maintenance and Conduct of Public Elementary Schools in General - - - - - - 29

Sub-sect. 5. Rules specially applicable to the Conduct of Schools provided by a Local Education Authority - - - - - - - - 33

Sub-sect. 6. Rules specially applicable to the Maintenance and Conduct of Voluntary Schools - - - 34

PART III. POWERS AND DUTIES OF LOCAL EDUCATION AUTHORITIES—*continued.* PAGE

SECT. 6. Blind, Deaf, Defective, and Epileptic Children - - - 40
Sub-sect. 1. In General - - - - - - - - - 40
Sub-sect. 2. Blind and Deaf Children - - - - - - 41
Sub-sect. 3. Defective and Epileptic Children - - - 42
Sub-sect. 4. Religious Instruction - - - - - - 43
Sub-sect. 5. Liability of Parent to Contribute to Expenses - 44
Sub-sect. 6. Certificates and Duties of Board of Education - 44

SECT. 7. Combined Action by Councils - - - - - - - 45

SECT. 8. Finance and Audit - - - - - - - - - - 47
Sub-sect. 1. In General - - - - - - - - 47
Sub-sect. 2. Provisions specially applicable to County Councils - - - - - - - - 47
Sub-sect. 3. Grants from Central Authorities - - - 48
Sub-sect. 4. Loans - - - - - - - - - 50
Sub-sect. 5. Miscellaneous Receipts - - - - - - 51
Sub-sect. 6. Audit - - - - - - - - - 52

SECT. 9. Provisions specially applicable to London - - - - 52

PART IV. DUTIES OF PARENTS AND EMPLOYERS - - - 54

SECT. 1. In General - - - - - - - - - - - 54

SECT. 2. Duties and Liabilities of Parents - - - - - - 55
Sub-sect. 1. In General - - - - - - - - - 55
Sub-sect. 2. Duty to cause Child to receive Efficient Elementary Instruction - - - - - - - - 56
Sub-sect. 3. Duty to cause Child to attend School in accordance with Bye-laws - - - - - - 58

SECT. 3. Duties and Liabilities of Employers - - - - - 62
Sub-sect. 1. In General - - - - - - - - 62
Sub-sect. 2. Default of Agents and Parents - - - - 64

SECT. 4. Legal Proceedings - - - - - - - - - 65

SECT. 5. Children in Canal Boats - - - - - - - - 67

SECT. 6. Children employed in Factories and Workshops - - 67

PART V. REFORMATORY AND INDUSTRIAL SCHOOLS - - - 70

SECT. 1. In General - - - - - - - - - - - 70

SECT. 2. Central Authority - - - - - - - - - - 72

SECT. 3. Powers and Duties of Local Authorities and Managers - 73

SECT. 4. Discharge, Transfer, Licence, Supervision etc. - - - 76

SECT. 5. Expenses of Schools - - - - - - - - - 77

SECT. 6. Day Industrial Schools - - - - - - - - 79

PART VI. POWERS AND DUTIES OF POOR LAW AUTHORITIES - 81

SECT. 1. In General - - - - - - - - - - - 81

SECT. 2. The Local Government Board - - - - - - - 81

SECT. 3. Powers and Duties of Guardians - - - - - - 82
Sub-sect. 1. In General - - - - - - - - 82
Sub-sect. 2. Certified Schools - - - - - - - 84

SECT. 4. District Boards - - - - - - - - - - 85
Sub-sect. 1. Formation of School Districts - - - - 85
Sub-sect. 2. Constitution of District Boards - - - - 86
Sub-sect. 3. Powers and Duties of District Boards - - 86
Sub-sect. 4. Expenses of District Boards - - - - 87

PART VI. POWERS AND DUTIES OF POOR LAW AUTHORITIES—*continued.* PAGE

SECT. 5. Grants to Poor Law Authorities by Councils in respect of Education - - - - - - - - - - 88
SECT. 6. Rules specially applicable to the Metropolis - - - 88
SECT. 7. Religious Instruction - - - - - - - - 89

PART VII. UNIVERSITIES AND SCHOOLS UNDER THE PUBLIC SCHOOLS ACTS - - - - - - - - - 90
SECT. 1. Universities in General - - - - - - - - 90
SECT. 2. Particular Institutions - - - - - - - - 94
SECT. 3. Schools under the Public Schools Acts - - - - 97

PART VIII. EDUCATIONAL CHARITIES - - - - - - - 99
SECT. 1. In General - - - - - - - - - - 99
SECT. 2. Powers of the Board of Education under the Endowed Schools Acts - - - - - - - - - 99
Sub-sect. 1. In General - - - - - - - - 99
Sub-sect. 2. Charities to which the Acts apply - - - 101
Sub-sect. 3. Apportionment of Mixed Charities - - - 104
Sub-sect. 4. Necessary Provisions in Schemes - - - 105
Sub-sect. 5. Necessary Provisions respecting Religious Matters 106
Sub-sect. 6. Procedure and Appeals - - - - - - 109
SECT. 3. Welsh Intermediate Education - - - - - - 111
Sub-sect. 1. In General - - - - - - - - 111
Sub-sect. 2. Endowments and Public Funds - - - 112
Sub-sect. 3. Religious Instruction - - - - - 113
Sub-sect. 4. Procedure - - - - - - - - 113
Sub-sect. 5. Operation of the Act - - - - - - 114
SECT. 4. Miscellaneous - - - - - - - - - 115
Sub-sect. 1. Provisions affecting certain Charities for Elementary Education - - - - - - - 115
Sub-sect. 2. Conversion of Non-educational Charities to Education - - - - - - - - 115
Sub-sect. 3. Schools within the Grammar Schools Act, 1840 - 116
Sub-sect. 4. Requirement of Conscience Clause under Lord Cranworth's Act - - - - - - - 116

PART IX. FACILITIES FOR GRANTING LAND FOR EDUCATION . 117
SECT. 1. In General - - - - - - - - - - 117
SECT. 2. Grants under the School Sites Acts - - - - - 118
SECT. 3. Technical and Industrial Institutions - - - - 121

PART X. SCHOOLMASTERS AND TEACHERS - - - - - 122
SECT. 1. In General - - - - - - - - - - 122
SECT. 2. Common Law Rules - - - - - - - - 122
Sub-sect. 1. The Contract to Educate - - - - - 122
Sub-sect. 2. Power to Punish Pupils - - - - - 124
SECT. 3. Schoolmasters as Officers of Charities - - - - 125
SECT. 4. Candidates for the Teaching Profession - - - - 127
SECT. 5. Registration of Teachers - - - - - - - 127
SECT. 6. Pension Scheme for Certificated Teachers - - - - 127

For Art Galleries - - - - - *See title* LITERARY AND SCIENTIFIC INSTITUTIONS; LOCAL GOVERNMENT.
Board of Agriculture and Fisheries - „ AGRICULTURE.

For Borstal Institutions	*See title*	CRIMINAL LAW AND PROCEDURE.
Charitable Trusts	,,	CHARITIES.
Charity Commissioners	,,	CHARITIES.
Child Labour	,,	FACTORIES AND SHOPS; INFANTS AND CHILDREN.
Closing Schools	,,	PUBLIC HEALTH ETC.
Compensation to Officers	,,	PUBLIC AUTHORITIES AND PUBLIC OFFICERS.
Gymnasiums	,,	LOCAL GOVERNMENT.
Land, Acquisition of	,,	COMPULSORY PURCHASE OF LAND ETC.; LOCAL GOVERNMENT.
Libraries	,,	LITERARY AND SCIENTIFIC INSTITUTIONS; LOCAL GOVERNMENT.
Local Authorities	,,	LOCAL GOVERNMENT.
Local Government Board	,,	LOCAL GOVERNMENT.
Museums	,,	LITERARY AND SCIENTIFIC INSTITUTIONS; LOCAL GOVERNMENT.
Provisional Orders	,,	PARLIAMENT.
Rating of School Buildings etc.	,,	RATES AND RATING.
Schools for Science and Art	,,	LOCAL GOVERNMENT.

EELS.

See FISHERIES.

EJECTMENT.

See COUNTY COURTS; LANDLORD AND TENANT; MORTGAGE; REAL PROPERTY AND CHATTELS REAL.

ELDEST SON.

See DESCENT AND DISTRIBUTION; SETTLEMENTS; WILLS.

ELECTION, DOCTRINE OF.

See EQUITY; WILLS.

PAGE

ELECTIONS **131—540**

PART I. INTRODUCTION 135

PART II. EXTENT OF FRANCHISE 139

SECT. 1. In Parliamentary Elections 139
Sub-sect. 1. Personal Qualifications 139
Sub-sect. 2. Property Qualifications 145
(i.) The Ownership Franchise (Counties only) . . 145
(ii.) The Occupation Franchise 155
(a) Counties 156
(b) Boroughs 158
(c) In General 159
(iii.) The Household Franchise 163
(a) Inhabitant Occupiers as Owners or actual Tenants 163
(b) The Service Franchise 172
(iv.) Lodger Franchise 174
(v.) Reserved Rights 177
(a) Counties 177
(b) Boroughs 178
(c) City of London 180

PART II. EXTENT OF FRANCHISE—*continued.* PAGE

SECT. 1. In Parliamentary Elections—*continued.*

Sub-sect. 3. The Universities - - - - - - - 181

(i.) Oxford - - - - - - - - - - 181
(ii.) Cambridge - - - - - - - - - 182
(iii.) London - - - - - - - - - - 182

SECT. 2. In Municipal Elections - - - - - - - - 182

Sub-sect. 1. Election of Councillors of a Municipal Borough - 182

(i.) Preliminary - - - - - - - - - 182
(ii.) Personal Qualifications - - - - - - - 182
(iii.) Property Qualifications - - - - - - - 184

(a) The Old Burgess Franchise - - - - - 184
(b) The Ten Pounds Occupation Franchise - - 188
(c) Franchises which do not obtain in Municipal Boroughs - - - - - - - - 189
(d) In the Metropolis - - - - - - - 190

Sub-sect. 2. Election of the Councillors of a County Council - 190
Sub-sect. 3. Election of the Councillors of Parish and District Councils - - - - - - - - - 191
Sub-sect. 4. Election of the Members of a Board of Guardians 192
Sub-sect. 5. Elections in the Universities - - - - - 192

PART III. REGISTRATION, AND REVISION OF LISTS OF VOTERS - 193

SECT. 1. Preparation of the Lists - - - - - - - - 193

Sub-sect. 1. In General - - - - - - - - - 193
Sub-sect. 2. The Precept - - - - - - - - - 195
Sub-sect. 3. Preliminary Inquiries and Notices by Overseers 196
Sub-sect. 4. Method of Publication of Notices, Lists, and Registers - - - - - - - - - 199
Sub-sect. 5. The Preparation of the Lists for Revision - - 200

(i.) The Ownership List - - - - - - - 201
(ii.) The List of Freemen - - - - - - - 202
(iii.) The Reserved Rights List - - - - - - 203
(iv.) The Occupiers List - - - - - - - 203
(v.) The Old Lodger List - - - - - - - 204
(vi.) The New Lodger List - - - - - - - 204
(vii.) The Non-resident List - - - - - - - 205

Sub-sect. 6. Notice of Claims and Objections - - - 205

(i.) Notice of Claim - - - - - - - - 205
(ii.) Notice of Objection - - - - - - - 209

SECT. 2. Revising Barristers - - - - - - - - - 217

Sub-sect. 1. Appointment - - - - - - - - 217
Sub-sect. 2. The Court - - - - - - - - - 219
Sub-sect. 3. The Actual Work of Revision - - - - 222

SECT. 3. The Register - - - - - - - - - - 241

Sub-sect. 1. Compiling the Register after Revision - - 241
Sub-sect. 2. The Completed Parliamentary Register - - 244
Sub-sect. 3. Registers of County Electors and Burgesses - 244

SECT. 4. Appeals - - - - - - - - - - - - 248

PART IV. THE CONDUCT OF AN ELECTION - - - - - 257

SECT. 1. Parliamentary - - - - - - - - - - 257

Sub-sect. 1. The Writ - - - - - - - - - 257
Sub-sect. 2. The Returning Officer - - - - - - 258
Sub-sect. 3. Notice of Election - - - - - - - 261
Sub-sect. 4. Commencement of the Election - - - - 263

PART IV. THE CONDUCT OF AN ELECTION—*continued.* PAGE

SECT. 1. Parliamentary—*continued.*

Sub-sect. 5. Candidates - - - - - - - - 264
Sub-sect. 6. Appointment of the Election Agent and Sub-agents - - - - - - - - - 266
Sub-sect. 7. Assistants, Workers, and Agents - - - 268
Sub-sect. 8. Nomination - - - - - - - - 273
Sub-sect. 9. Freedom of Election and the Prevention of Corrupt and Illegal Practices - - - 278
(i.) In General - - - - - - - - - 278
(ii.) Corrupt Practices - - - - - - - - 281
(iii.) Illegal Practices - - - - - - - - 293
(iv.) Illegal Payment and Illegal Employment - - 300
(v.) Illegal Hiring - - - - - - - - - 303
Sub-sect. 10. The Poll - - - - - - - - - 305
(i.) In General - - - - - - - - - 305
(ii.) University Elections - - - - - - - 322
Sub-sect. 11. Counting the Votes - - - - - - 326
Sub-sect. 12. Disposal of the Ballot Papers - - - - 329
Sub-sect. 13. Declaration of the Result and Return of the Member - - - - - - - - 331
Sub-sect. 14. The Returning Officer's Expenses - - - 333
Sub-sect. 15. The Return and Declaration respecting Candidates' Election Expenses - - - - - 335

SECT. 2. Municipal - - - - - - - - - - - 338

Sub-sect. 1. In General - - - - - - - - 338
Sub-sect. 2. Election of Councillors in Municipal Corporations - - - - - - - - - 339
(i.) Preliminary - - - - - - - - - 339
(ii.) Agents, Workers, and Assistants - - - - 341
(iii.) Nomination - - - - - - - - - 342
(iv.) Freedom of Election and the Prevention of Corrupt and Illegal Practices - - - - - - - 345
(v.) The Poll etc. - - - - - - - - - 349
(vi.) Return and Declaration as to Expenses - - - 351
Sub-sect. 3. Election of Mayor in Municipal Corporations - 352
Sub-sect. 4. Election of Aldermen in Municipal Corporations 354
Sub-sect. 5. Election of Elective Auditors in Municipal Corporations - - - - - - - - - 355
Sub-sect. 6. Election of the Councillors of a County Council 356
Sub-sect. 7. Election of the Chairman of a County Council - 359
Sub-sect. 8. Election of County Aldermen - - - - - 361
Sub-sect. 9. Election of the Councillors of an Urban District Council - - - - - - - - - 361
(i.) Preliminary - - - - - - - - - 361
(ii.) Nomination - - - - - - - - - 364
(iii.) Freedom of Election etc. - - - - - - - 368
(iv.) The Poll - - - - - - - - - - 368
(v.) Counting the Votes - - - - - - - - 373
(vi.) Declaration of the Result - - - - - - 374
Sub-sect. 10. Election of the Chairman of an Urban District Council - - - - - - - - - 375
Sub-sect. 11. Election of Councillors of a Rural District Council 376
(i.) Preliminary - - - - - - - - - 376
(ii.) Nomination - - - - - - - - - 378
(iii.) The Poll - - - - - - - - - - 379
(iv.) Counting the Votes - - - - - - - - 381
(v.) Declaration of the Result - - - - - - 381
Sub-sect. 12. Election of the Chairman and Vice-Chairman of a Rural District Council - - - - - 382

PART IV. THE CONDUCT OF AN ELECTION—*continued.* PAGE

SECT. 2. Municipal—*continued.*

Sub-sect. 13. Election of the Councillors of a Parish Council 382
(i.) Preliminary - - - - - - - - - 382
(ii.) Nomination etc. - - - - - - - - 383
(iii.) Proceedings between the Parish Meeting and the Poll 387
(iv.) The Poll - - - - - - - - - 388
(v.) Declaration of the Result - - - - - 389
Sub-sect. 14. Election of the Chairman of a Parish Council - 389
Sub-sect. 15. Election of the Members of a Board of Guardians - - - - - - - 389
(i.) Preliminary - - - - - - - - 389
(ii.) The Poll - - - - - - - - - 391
(iii.) Counting the Votes - - - - - - - 392
Sub-sect. 16. Election of the Chairman of a Board of Guardians - - - - - - - 393
Sub-sect. 17. Elections in the Metropolis - - - - 393
(i.) In General - - - - - - - - 393
(ii.) The Corporation of the City of London - - - 394
(iii.) The Metropolitan Borough Councils - - - - 395
(iv.) The London County Council - - - - - 397
(v.) Boards of Guardians - - - - - - - 397
Sub-sect. 18. University Elections (other than Parliamentary) 398

PART V. AUTHORISED EXCUSES AND EXCEPTIONS - - - 398
SECT. 1. In Parliamentary Elections - - - - - - - 398
SECT. 2. In Municipal Elections - - - - - - - - 407

PART VI. PETITIONS - - - - - - - - - - - 408
SECT. 1. In Parliamentary Elections - - - - - - - 408
Sub-sect. 1. The Election Judges and their Jurisdiction - 408
Sub-sect. 2. Presentation of a Petition - - - - - 411
Sub-sect. 3. Security for Costs - - - - - - 419
Sub-sect. 4. Interlocutory Proceedings - - - - 422
Sub-sect. 5. The Hearing - - - - - - - 437
Sub-sect. 6. Judgment and its Effect - - - - - 460
Sub-sect. 7. Election Commissioners - - - - - 463
Sub-sect. 8. Costs - - - - - - - - - 472
Sub-sect. 9. Disqualification of Individuals - - - - 483
SECT. 2. Municipal Elections - - - - - - - - - 486
Sub-sect. 1. The Commissioner and his Jurisdiction - - 486
Sub-sect. 2. Presentation of a Petition - - - - - 491
Sub-sect. 3. Interlocutory Proceedings - - - - 505
Sub-sect. 4. The Hearing - - - - - - - 512
Sub-sect. 5. Judgment and its Effects - - - - - 518
Sub-sect. 6. Costs - - - - - - - - - 520
Sub-sect. 7. Disqualification of Individuals - - - - 524

PART VII. CRIMINAL LAW, PENAL ACTIONS, AND INJUNCTIONS 525
SECT. 1. Criminal Law - - - - - - - - - - 525
Sub-sect. 1. Felonies - - - - - - - - - 525
Sub-sect. 2. Indictable Misdemeanours - - - - - 528
Sub-sect. 3. Offences which are summarily triable - - 532
Sub-sect. 4. The Criminal Jurisdiction of the Election Court 535
SECT. 2. Penal Actions and Injunctions - - - - - - - 537
Sub-sect. 1. Penal Actions - - - - - - - - 537
Sub-sect. 2. Injunctions - - - - - - - - - 540

For Acceptance of Office	- - -	*See title* LOCAL GOVERNMENT; PARLIAMENT.
Churchwardens	- - - -	,, ECCLESIASTICAL LAW.
Convocation	- - - -	,, ECCLESIASTICAL LAW.
Corporate Officers	- - -	,, COMPANIES; CORPORATIONS.
Directors	- - - - -	,, COMPANIES.
Disqualification of Candidates	-	,, LOCAL GOVERNMENT; PARLIAMENT.
Ecclesiastical Officers	- - -	,, ECCLESIASTICAL LAW.
Manorial Officers	- - -	,, COPYHOLDS.
Members of Parliament	- -	,, PARLIAMENT.
Municipal Officers	- - -	,, LOCAL GOVERNMENT.
Poor Law Officers	- - -	,, POOR LAW.
Public Meetings	- - - -	,, CRIMINAL LAW AND PROCEDURE; LIBEL AND SLANDER; PRESS AND PRINTING.
Qualification of Candidates	- -	,, LOCAL GOVERNMENT; PARLIAMENT.
Representative Peers	- - -	,, CONSTITUTIONAL LAW; PARLIAMENT.
Resignation	- - - - -	,, LOCAL GOVERNMENT; PARLIAMENT.
Speaker, Election of	- - -	,, PARLIAMENT.

ELECTIVE AUDITORS.

See COMPANIES; ELECTIONS; LOCAL GOVERNMENT.

PAGE

ELECTRIC LIGHTING AND POWER - - - - 541—645

PART I. ELECTRICAL UNDERTAKINGS - - - - - - 542

PART II. DEFINITIONS - - - - - - - - - - 547

PART III. RECEIPTS AND EXPENDITURE OF LOCAL AUTHORITIES 552

PART IV. GRANT OF PROVISIONAL ORDER - - - - - 556

PART V. POWERS AND DUTIES OF UNDERTAKERS - - - 560

SECT. 1. Introductory - - - - - - - - - - 560

SECT. 2. General Powers and Obligations - - - - - 561

SECT. 3. Mortgage of Undertaking - - - - - - 563

SECT. 4. Responsibility for Nuisance etc. - - - - - 563

SECT. 5. Area of Supply - - - - - - - - - 566

SECT. 6. System and Mode of Supply - - - - - - 567

SECT. 7. Security for Execution of Works - - - - - 567

SECT. 8. Acquisition of Land - - - - - - - - 568

SECT. 9. Generating Stations - - - - - - - - 570

SECT. 10. Works - - - - - - - - - - - - 570

SECT. 11. Compulsory Works - - - - - - - - - 586

SECT. 12. Supply of Electricity within the Area of Supply; Price - 588

SECT. 13. Supply Outside Area of Supply - - - - - - 595

SECT. 14. Meters - - - - - - - - - - - - 596

SECT. 15. Recovery of Charges - - - - - - - - 598

SECT. 16. Acquisition of Undertaking by Local Authority - - 600

SECT. 17. Remedy of Defects - - - - - - - - - 602

PAGE

PART V. POWERS AND DUTIES OF UNDERTAKERS—*continued.*

SECT. 18. Revocation of Powers - - - - - - - - 603

SECT. 19. Accounts and Audit - - - - - - - - 604

SECT. 20. Inspectors, Testing and Inspection - - - - - 605

SECT. 21. Miscellaneous - - - - - - - - - 607

Sub-sect. 1. Personal Liability of Members etc. of Local Authority - - - - - - - - 607
Sub-sect. 2. Maps and sections - - - - - - - 607
Sub-sect. 3. Notices - - - - - - - - - 608
Sub-sect. 4. Publication of Board of Trade Regulations - 609
Sub-sect. 5. Security - - - - - - - - - 609
Sub-sect. 6. Board of Trade Proceedings - - - - 609
Sub-sect. 7. Recovery of Penalties etc. - - - - 610
Sub-sect. 8. Saving Clauses - - - - - - - 612
Sub-sect. 9. Injury to Undertakers' Works - - - 612
Sub-sect. 10. Stealing Electricity - - - - - - 614
Sub-sect. 11. Property in Apparatus on Consumers' Premises 614
Sub-sect. 12. Entry on Premises - - - - - - 614
Sub-sect. 13. Distress and Execution - - - - - 615
Sub-sect. 14. Notice of Accidents - - - - - - 615
Sub-sect. 15. Arbitration - - - - - - - - 615
Sub-sect. 16. Stamp Duty on Agreements for Supply of Electricity - - - - - - - - 615

PART VI. METROPOLITAN UNDERTAKINGS - - - - - 616

PART VII. SPECIAL LEGISLATION - - - - - - - - 627

SECT. 1. Power Acts - - - - - - - - - - 627

SECT. 2. Provisional Orders and Confirming Acts - - - - 635

SECT. 3. Local Authorities' Acts - - - - - - - - 638

PART VIII. UNDERTAKINGS NOT SPECIALLY AUTHORISED . - 639

SECT. 1. Private Undertakings and Installations - - - - 639

SECT. 2. Electric Lighting of Streets by Local Authorities under General Powers - - - - - - - - - - 642

PART IX. MISCELLANEOUS - - - - - - - - - 644

For Accounts - - - *See title* LOCAL GOVERNMENT; METROPOLIS.
Acquisition of Land - - ,, COMPULSORY PURCHASE OF LAND ETC.
Electric Railways - - ,, TRAMWAYS AND LIGHT RAILWAYS.
Electric Telegraphs - - ,, TELEGRAPHS AND TELEPHONES.
Electric Traction - - ,, RAILWAYS AND CANALS; TRAMWAYS AND LIGHT RAILWAYS.
Electric Tramways - ,, TRAMWAYS AND LIGHT RAILWAYS.
Highways - - - ,, HIGHWAYS, STREETS, AND BRIDGES.
Local Areas - - - ,, LOCAL GOVERNMENT; METROPOLIS.
Local Authorities - ,, LOCAL GOVERNMENT; METROPOLIS.
Local Loans Act - - ,, LOCAL GOVERNMENT.
Measurement of Electricity ,, WEIGHTS AND MEASURES.
Negligence - - - ,, NEGLIGENCE.
Nuisances - - - ,, NUISANCE.
Private Bill Procedure - ,, PARLIAMENT.
Telephones - - - ,, TELEGRAPHS AND TELEPHONES.

ELEGIT.

See EXECUTION.

ELEMENTARY EDUCATION.

See EDUCATION.

EMBEZZLEMENT.

See CRIMINAL LAW AND PROCEDURE.

EMBLEMENTS.

See LANDLORD AND TENANT; REAL PROPERTY AND CHATTELS REAL.

EMBRACERY.

See CRIMINAL LAW AND PROCEDURE.

EMIGRANT AND EMIGRATION.

See SHIPPING AND NAVIGATION.

EMIGRANT RUNNER.

See SHIPPING AND NAVIGATION.

EMPLOYER'S LIABILITY.

See MASTER AND SERVANT.

ENCROACHMENT.

See COMMONS AND RIGHTS OF COMMON; HIGHWAYS, STREETS AND BRIDGES.

ENFRANCHISEMENT.

See COPYHOLDS.

ENGINEERS.

See BUILDING CONTRACTS ETC.

ENGLISH INFORMATION.

See CROWN PRACTICE.

ENGRAVINGS.

See COPYRIGHT AND LITERARY PROPERTY.

ENTAIL.

See DESCENT AND DISTRIBUTION; REAL PROPERTY AND CHATTELS REAL.

ENTRY ON LAND.

See COMPULSORY PURCHASE OF LAND AND COMPENSATION.

EPISCOPAL VISITATION.

See ECCLESIASTICAL LAW.

EQUITABLE ASSIGNMENTS.

See CHOSES IN ACTION; MORTGAGE.

EQUITABLE DEFENCES.

See EQUITY.

EQUITABLE EXECUTION.

See EXECUTION.

ABBREVIATIONS

USED IN THIS WORK.

A. C. (preceded by date) ..	Law Reports, Appeal Cases, House of Lords, since 1890 (*e.g.* [1891] A. C.)
A.-G.	Attorney-General
Act.	Acton's Reports, Prize Causes, 2 vols., 1809—1811
Ad. & El.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1831—1842
Adam	Adam's Justiciary Reports (Scotland), 1893—(current)
Add.	Addams' Ecclesiastical Reports, 3 vols., 1822—1826
Adv.-Gen.	Advocate-General
Alc. & N.	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833
Alc. Reg. Cas.	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841
Aleyn	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649
Amb.	Ambler's Reports, Chancery, 2 vols., 1725—1783
And.	Anderson's Reports, Common Pleas, fol., 1 vol., 1535—1605
Andr.	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740
Anon.	Anonymous
Anst.	Anstruther's Reports, Exchequer, 3 vols., 1792—1797
App. Cas.	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875—1890
Arkley	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848
Arm. M. & O.	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842
Arn.	Arnold's Reports, Common Pleas, 2 vols., 1838—1839
Arn. & H.	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841
Asp. M. L. C.	Aspinall's Maritime Law Cases, 1870—(current)
Atk.	Atkyns' Reports, Chancery, 3 vols., 1736—1754
Ayl. Pan.	Ayliffe's New Pandect of Roman Civil Law
Ayl. Par.	Ayliffe's Parergon Juris Canonici Anglicani
B. & Ad.	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834
B. & Ald.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822
B. & C.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830
B. & S.	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870
Bac. Abr.	Bacon's Abridgment
Bail Ct. Cas.	Bail Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854
Ball & B.	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—1814
Bankr. & Ins. R. ..	Bankruptcy and Insolvency Reports, 2 vols., 1853—1855

Bar. & Arn.	Barron & Arnold's Election Cases, 1 vol., 1843—1846
Bar. & Aust.	Barron & Austin's Election Cases, 1 vol., 1842
Barn. (CH.)	Barnardiston's Reports, Chancery, fol., 1 vol., 1740—1741
Barn. (K. B.)	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734
Barnes	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., 1732—1760
Batt.	Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826
Beat.	Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830
Beav.	Beavan's Reports, Rolls Court, 36 vols., 1838—1866
Beav. & Wal.	Beavan and Walford's Railway Parliamentary Cases, 1 vol., 1846
Beaw.	Beawes's Lex Mercatoria
Bellewe	Bellewe's Cases *temp.* Richard II., King's Bench, 1 vol.
Bell, C. C.	T. Bell's Crown Cases Reserved, 1 vol., 1858—1860
Bell, Ct. of Sess. ..	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—1792
Bell, Ct. of Sess. fol. ..	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794—1795
Bell, Dict. Dec. ..	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols., 1808—1833
Bell, Sc. App.	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842—1850
Belt's Sup.	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746—1756
Benl.	Benloe's (or Bendloe's) Reports, King's Bench and Common Pleas, fol., 1 vol., 1515—1627
Ben. & D.	Benloe and Dalison's Reports, Common Pleas, fol., 1 vol., 1357—1579
Bing.	Bingham's Reports, Common Pleas, 10 vols., 1822—1834
Bing. (N. C.)	Bingham's New Cases, Common Pleas, 6 vols., 1834—1840
Bitt. Prac. Cas.	Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol., 1875—1876
Bitt. Rep. in Ch. ..	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883—1884
Bl. Com.	Blackstone's Commentaries
Bl. D. & Osb.	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol., 1846—1848
Bli.	Bligh's Reports, House of Lords, 4 vols., 1819—1821
Bli. (N. S.)	Bligh's Reports, House of Lords, New Series, 11 vols., 1827—1837
Bos. & P.	Bosanquet and Puller's Reports, Common Pleas, 3 vols., 1796—1804
Bos. & P. (N. R.) ..	Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804—1807
Bract.	Bracton De Legibus et Consuetudinibus Angliæ
Bro. Abr.	Sir J. Brooke's Abridgment
Bro. C. C.	W. Brown's Chancery Reports, 4 vols., 1778—1794
Bro. Ecc. Rep.	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol., 1850—1872
Bro. (N. C.)	Sir R. Brooke's New Cases, 1 vol., 1515—1558
Bro. Parl. Cas.	J. Brown's Cases in Parliament, 8 vols., 1702—1800
Bro. Supp. to Mor. ..	M. P. Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols.
Bro. Synop.	M. P. Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols., 1532—1827
Brod. & Bing.	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819—1822

Brod. & F.	Brodrick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol., 1705—1864
Broun	Broun's Justiciary Reports (Scotland), 2 vols., 1842—1845
Brown. & Lush. ..	Browning and Lushington's Reports, Admiralty, 1 vol., 1863—1866
Brownl.	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1569—1624
Bruce	Bruce's Decisions, Court of Session (Scotland), 1714—1715
Buchan.	Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806—1813
Buck	Buck's Cases in Bankruptcy, 1 vol., 1816—1820
Bulst.	Bulstrode's Reports, King's Bench, fol., 3 parts in 1 vol., 1610—1626
Bunb.	Bunbury's Reports, Exchequer, fol., 1 vol., 1713—1741
Burr.	Burrow's Reports, King's Bench, 5 vols., 1756—1772
Burr. S. C.	Burrow's Settlement Cases, King's Bench, 1 vol., 1733—1776
Burrell	Burrell's Reports, Admiralty, ed. by Marsden, 1 vol., 1648—1840
C. A.	Court of Appeal
C. B.	Common Bench Reports, 18 vols., 1845—1856
C. B. (N. S.)	Common Bench Reports, New Series, 20 vols., 1856—1865
C. C. Ct. Cas.	Central Criminal Court Cases (Sessions Papers), 1834—(current)
C. L. R.	Common Law Reports, 3 vols., 1853—1855
C. P. D.	Law Reports, Common Pleas Division, 5 vols., 1875—1880
C. & P.	Carrington and Payne's Reports, Nisi Prius, 9 vols., 1823—1841
Cab. & El.	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885
Cald. Mag. Cas. ..	Caldecott's Magistrates Cases, 1 vol., 1777—1786
Calth.	Calthrop's City of London Cases, King's Bench, 1 vol., 1609—1618
Camp.	Campbell's Reports, Nisi Prius, 4 vols., 1807—1816
Carp. Pat. Cas.	Carpmael's Patent Cases, 2 vols., 1602—1842
Car. & Kir.	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1815—1853
Car. & M.	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841—1843
Cart.	Carter's Reports, Common Pleas, fol., 1 vol., 1664—1673
Carth.	Carthew's Reports, King's Bench, fol., 1 vol., 1687—1700
Cary	Cary's Reports, Chancery, 1 vol.
Cas. in Ch.	Cases in Chancery, fol., 3 parts, 1660—1697
Cas. Pract. K. B. ..	Cases of Practice, King's Bench, 1 vol., 1655—1775
Cas. Sett.	Cases of Settlements and Removals, 1 vol., 1689—1727
Cas. *temp.* Finch ..	Cases *temp.* Finch, Chancery, fol., 1 vol., 1673—1680
Cas. *temp.* King ..	Select Cases *temp.* King, Chancery, fol., 1 vol., 1724—1733
Cas. *temp.* Talb.	Cases in Equity *temp.* Talbot, fol., 1 vol., 1730—1737
Ch. (preceded by date) ..	Law Reports, Chancery Division, since 1890 (*e.g.* [1891] 1 Ch.)
Ch. App.	Law Reports, Chancery Appeals, 10 vols., 1865—1875
Ch. D.	Law Reports, Chancery Division, 45 vols., 1875—1890
Ch. Rob.	Christopher Robinson's Reports, Admiralty, 6 vols., 1798—1808

Char. Pr. Cas.	Charley's New Practice Reports, 3 vols., 1875—1876
Char. Cham. Cas. ..	Charley's Chamber Cases, 1 vol., 1875—1876
Chit.	Chitty's Practice Reports, King's Bench, 2 vols., 1770—1822
Cl. & Fin.	Clark and Finnelly's Reports, House of Lords, 12 vols., 1831—1846
Clay.	Clayton's Reports and Pleas of Assises at Yorke, 1 vol., 1631—1650
Clif. & Rick.	Clifford and Rickards' Locus Standi Reports, 3 vols., 1873—1884
Clif. & Steph.	Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872
Cockb. & Rowe	Cockburn and Rowe's Election Cases, 1 vol., 1833
Co. Ent.	Coke's Entries
Co. Inst...	Coke's Institutes
Co. Litt.	Coke on Littleton (1 Inst.)
Co. Rep.	Coke's Reports, 13 parts, 1572—1616
Coll.	Collyer's Reports, Chancery, 2 vols., 1844—1846
Coll. Jurid.	Collectanea Juridica, 2 vols.
Colles	Colles' Cases in Parliament, 1 vol., 1697—1713
Colt.	Coltman's Registration Cases, 1 vol., 1879—1885
Com.	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740
Com. Cas.	Commercial Cases, 1895—(current)
Com. Dig.	Comyns' Digest
Comb.	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698
Con. & Law.	Connor and Lawson's Reports, Chancery (Ireland), 2 vols., 1841—1843
Cooke & Al.	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol., 1833—1834
Cooke, Pr. Cas. ..	Cooke's Practice Reports, Common Pleas, 1 vol., 1706—1747
Cooke, Pr. Reg... ..	Cooke's Practical Register of the Common Pleas, 1 vol., 1702—1742
Coop. G...	G. Cooper's Reports, Chancery, 1 vol., 1792—1815
Coop. Pr. Cas.	C. P. Cooper's Reports, Chancery Practice, 1 vol., 1837—1838
Coop. *temp.* Brough. ..	C. P. Cooper's Cases *temp.* Brougham, Chancery, 1 vol., 1833—1834
Coop. *temp.* Cott. ..	C. P. Cooper's Cases *temp.* Cottenham, Chancery, 2 vols., 1846—1848 (and miscellaneous earlier cases)
Corb. & D.	Corbett and Daniell's Election Cases, 1 vol., 1819
Couper	Couper's Justiciary Reports (Scotland), 5 vols., 1868—1885
Cowp.	Cowper's Reports, King's Bench, 2 vols., 1774—1778
Cox, C. C.	E. W. Cox's Criminal Law Cases, 1843—(current)
Cox & Atk.	Cox and Atkinson's Registration Appeal Cases, 1 vol., 1843—1846
Cox, Eq. Cas.	S. C. Cox's Equity Cases, 2 vols., 1745—1797
Cox, M. & H.	Cox, Macrae, and Hertslet's County Courts Cases and Appeals, Vol. I., 1846—1852
Cr. & J.	Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832
Cr. & M...	Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834
Cr. M. & R.	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols., 1834—1835
Cr. & Ph.	Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841
Cr. App. Rep.	Cohen's Criminal Appeal Reports, 1909 (current)
Craw. & D.	Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846

Craw. & D. Abr. C. ..	Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838
Cress. Insolv. Cas. ..	Cresswell's Insolvency Cases, 1 vol., 1827—1829
Cripps' Church Cas. ..	Cripps' Church and Clergy Cases, 2 parts, 1847—1850
Cro. Car.	Croke's Reports *temp.* Charles I., King's Bench and Common Pleas, 1 vol., 1625—1641
Cro. Eliz.	Croke's Reports *temp.* Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603
Cro. Jac.	Croke's Reports *temp.* James I., King's Bench and Common Pleas, 1 vol., 1603—1625
Cru. Dig.	Cruise's Digest of the Law of Real Property, 7 vols.
Cunn.	Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735
Curt.	Curteis' Ecclesiastical Reports, 3 vols., 1834—1844
Dalr.	Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1698—1720
Dan.	Daniell's Reports, Exchequer in Equity, 1 vol., 1817—1823
Dan. & Ll.	Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829
Dav. & Mer.	Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—1844
Dav. Pat. Cas.	Davies' Patent Cases, 1 vol., 1785—1816
Dav. Ir.	Davys' (or Davies' or Davy's) Reports (Ireland), 1 vol., 1604—1611
Day	Day's Election Cases, 1 vol., 1892—1893
Dea. & Sw.	Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857
Deac.	Deacon's Reports, Bankruptcy, 4 vols., 1834—1840
Deac. & Ch.	Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835
Dears. & B.	Dearsly and Bell's Crown Cases Reserved, 1 vol., 1856—1858
Dears. C. C.	Dearsly's Crown Cases Reserved, 1 vol., 1852—1856
Deas & And.	Deas and Anderson's Decisions (Scotland), 5 vols., 1829—1832
De G.	De Gex's Reports, Bankruptcy, 1 vol., 1844—1848
De G. F. & J.	De Gex, Fisher, and Jones's Reports, Chancery, 4 vols., 1859—1862
De G. & J.	De Gex and Jones's Reports, Chancery, 4 vols., 1857—1859
De G. J. & Sm.	De Gex, Jones, and Smith's Reports, Chancery, 4 vols., 1862—1865
De G. M. & G.	De Gex, Macnaghten, and Gordon's Reports, Chancery, 8 vols., 1851—1857
De G. & Sm.	De Gex and Smale's Reports, Chancery, 5 vols., 1846—1852
Delane	Delane's Decisions, Revision Courts, 1 vol., 1832—1835
Den.	Denison's Crown Cases Reserved, 2 vols., 1844—1852
Dick.	Dickens' Reports, Chancery, 2 vols., 1559—1798
Dig.	Justinian's Digest or Pandects
Dirl.	Dirleton's Decisions, Court of Session (Scotland), fol., 1 vol., 1665—1677
Dods.	Dodson's Reports, Admiralty, 2 vols., 1811—1822
Donnelly	Donnelly's Reports, Chancery, 1 vol., 1836—1837
Doug. El. Cas.	Douglas' Election Cases, 4 vols., 1774—1776
Doug. (K. B.)	Douglas' Reports, King's Bench, 4 vols., 1778—1785
Dow	Dow's Reports, House of Lords, 6 vols., 1812—1818
Dow & Cl.	Dow and Clark's Reports, House of Lords, 2 vols., 1827—1832
Dow. & L. .. .	Dowling and Lowndes' Practice Reports, 7 vols., 1843—1849

Dow. & Ry. (K. B.) ..	Dowling and Ryland's Reports, King's Bench, 9 vols., 1822—1827
Dow. & Ry. (M. C.) ..	Dowling and Ryland's Magistrates' Cases, 4 vols., 1822—1827
Dow. & Ry. (N. P.) ..	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822—1823
Dowl.	Dowling's Practice Reports, 9 vols., 1830—1841
Dowl. (N. S.)	Dowling's Practice Reports, New Series, 2 vols., 1841—1843
Dr. & Wal.	Drury and Walsh's Reports, Chancery (Ireland), 2 vols., 1837—1841
Dr. & War.	Drury and Warren's Reports, Chancery (Ireland), 4 vols., 1841—1843
Drew.	Drewry's Reports, Chancery, 4 vols., 1852—1859
Drew. & Sm.	Drewry and Smale's Reports, Chancery, 2 vols., 1859—1865
Drinkwater	Drinkwater's Reports, Common Pleas, 1 vol., 1839
Drury *temp.* Nap. ..	Drury's Reports *temp.* Napier, Chancery (Ireland), 1 vol., 1858—1859
Drury *temp.* Sug. ..	Drury's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1841—1844
Dugd. Orig.	Dugdale's Origines Juridiciales
Dunl. (Ct. of Sess.) ..	Dunlop, Court of Session Cases (Scotland), 2nd series, 24 vols., 1838—1862
Dunning..	Dunning's Reports, King's Bench, 1 vol., 1753—1754
Durie	Durie's Decisions, Court of Session (Scotland), fol., 1 vol., 1621—1642
Dyer	Dyer's Reports, King's Bench, 3 vols., 1513—1581
E. & B.	Ellis and Blackburn's Reports, Queen's Bench, 8 vols., 1852—1858
E. & E.	Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858—1861
E. B. & E.	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol., 1858—1860
Eag. & Y.	Eagle and Younge's Tithe Cases, 4 vols., 1223—1825
East	East's Reports, King's Bench, 16 vols., 1800—1812
East, P. C.	East's Pleas of the Crown
Ecc. & Ad.	Spinks' Ecclesiastical and Admiralty Reports, 2 vols., 1853—1855
Eden	Eden's Reports, Chancery, 2 vols., 1757—1766
Edgar	Edgar's Decisions, Court of Session (Scotland), fol., 1724—1725
Edw.	Edwards' Reports, Admiralty, 1 vol., 1808—1812
Elchies	Elchies' Decisions, Court of Session (Scotland), 2 vols., 1733—1754
Eng. Pr. Cas.	Roscoe's English Prize Cases, 2 vols., 1745—1858
Eq. Cas. Abr.	Abridgment of Cases in Equity, fol., 2 vols., 1667—1744
Eq. Rep.	Equity Reports, 3 vols., 1853—1855
Esp.	Espinasse's Reports, Nisi Prius, 6 vols., 1793—1810
Exch.	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols., 1847—1856
Ex. D.	Law Reports, Exchequer Division, 5 vols., 1875—1880
F. & F.	Foster and Finlason's Reports, Nisi Prius, 4 vols., 1856—1867
F. (Ct. of Sess.) ..	Fraser, Court of Session Cases (Scotland), 5th series, 1898—1906
Fac. Coll. (with date) ..	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), fol., 1st and 2nd series, 21 vols. 1752—1825

Fac. Coll. (N. S.) (with date)	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), New Series, 16 vols., 1825—1841
Falc.	Falconer's Decisions, Court of Session (Scotland), 2 vols., fol., 1744—1751
Falc. & Fitz.	Falconer and Fitzherbert's Election Cases, 1 vol., 1835—1838
Ferg.	Ferguson's Consistorial Decisions (Scotland), 1 vol., 1811—1817
Fitz-G.	Fitz-Gibbons' Reports, King's Bench, fol., 1 vol., 1728—1731
Fitz. Nat. Brev. ..	Fitzherbert's Natura Brevium
Fl. & K.	Flanagan and Kelly's Reports, Rolls Court (Ireland), 1 vol., 1840—1842
Fonbl.	Fonblanque's Reports, Bankruptcy, 2 parts, 1849—1852
For.	Forrest's Reports, Exchequer, 1 vol., 1800—1801
Forb.	Forbes' Decisions, Court of Session (Scotland), fol., 1 vol., 1705—1713
Fort. De Laud. ..	Fortescue, De Laudibus Legum Angliæ
Fortes. Rep.	Fortescue's Reports, fol., 1 vol., 1692—1736
Fost.	Foster's Crown Cases, 1 vol., 1743—1760
Fount.	Fountainhall's Decisions, Court of Session (Scotland), fol., 2 vols., 1678—1712
Fox & S. Ir.	M. C. Fox and T. B. C. Smith's Reports, King's Bench (Ireland), 2 vols., 1822—1825
Fox & S. Reg.	J. S. Fox and C. L. Smith's Registration Cases, 1 vol., 1886—1895
Freem. (CH.)	Freeman's Reports, Chancery, 1 vol., 1660—1706
Freem. (K. B.)	Freeman's Reports, King's Bench and Common Pleas, 1 vol., 1670—1704
Gal. & Dav.	Gale and Davison's Reports, Queen's Bench, 3 vols., 1841—1843
Gale	Gale's Reports, Exchequer, 2 vols., 1835—1836
Gib. Cod.	Gibson's Codex Juris Ecclesiastici Anglicani
Giff.	Giffard's Reports, Chancery, 5 vols., 1857—1865
Gilb.	Gilbert's Cases in Law and Equity, 1 vol., 1713—1714
Gilb. C. P.	Gilbert's History and Practice of the Court of Common Pleas
Gilb. (CH.)	Gilbert's Reports, Chancery and Exchequer, fol., 1 vol., 1706—1726
Gilm. & F.	Gilmour and Falconer's Decisions, Court of Session (Scotland), 2 parts, Part I. (Gilmour) 1661—1666, Part II. (Falconer) 1681—1686
Gl. & J.	Glyn and Jameson's Reports, Bankruptcy, 2 vols., 1819—1828
Glanv.	Glanville, De Legibus et Consuetudinibus Regni Angliæ
Glanv. El. Cas.	Glanville's Election Cases, 1 vol., 1623—1624
Glascock	Glascock's Reports (Ireland), 1 vol., 1831—1832
Godb.	Godbolt's Reports, King's Bench, Common Pleas, and Exchequer, 1 vol., 1574—1637
Gouldsb.	Gouldsborough's Reports, Queen's Bench and King's Bench, 1 vol., 1586—1601
Gow	Gow's Reports, Nisi Prius, 1 vol., 1818—1820
Gwill.	Gwillim's Tithe Cases, 4 vols., 1224—1824
H. & C.	Hurlstone and Coltman's Reports, Exchequer, 4 vols., 1862—1866
H. & N.	Hurlstone and Norman's Reports, Exchequer, 7 vols., 1856—1862

H. & Tw.	Hall and Twells' Reports, Chancery, 2 vols., 1848—1850
H. & W.	Hurlstone and Walmsley's Reports, Exchequer, 1 vol., 1840—1841
H. L. Cas.	Clark's Reports, House of Lords, 11 vols., 1847—1866
Hag. Adm.	Haggard's Reports, Admiralty, 3 vols., 1822—1838
Hag. Con.	Haggard's Consistorial Reports, 2 vols., 1789—1821
Hag. Ecc.	Haggard's Ecclesiastical Reports, 4 vols., 1827—1833
Hailes	Hailes's Decisions, Court of Session (Scotland), 2 vols., 1766—1791
Hale, C. L.	Hale's Common Law
Hale, P. C.	Hale's Pleas of the Crown, 2 vols.
Har. & Ruth.	Harrison and Rutherfurd's Reports, Common Pleas, 1 vol., 1865—1866
Har. & W.	Harrison and Wollaston's Reports, King's Bench and Bail Court, 2 vols., 1835—1836
Harc.	Harcarse's Decisions, Court of Session (Scotland), fol., 1 vol., 1681—1691
Hard.	Hardres' Reports, Exchequer, fol., 1 vol., 1655—1669
Hare	Hare's Reports, Chancery, 11 vols., 1841—1853
Hawk P. C.	Hawkins's Pleas of the Crown, 2 vols.
Hayes	Hayes's Reports, Exchequer (Ireland), 1 vol., 1830—1832
Hayes & Jo.	Hayes and Jones's Reports, Exchequer (Ireland), 1 vol., 1832—1834
Hem. & M.	Hemming and Miller's Reports, Chancery, 2 vols., 1862—1865
Het.	Hetley's Reports, Common Pleas, fol., 1 vol., 1627—1631
Hob.	Hobart's Reports, Common Pleas, fol., 1 vol., 1613—1625
Hodg.	Hodges' Reports, Common Pleas, 3 vols., 1835—1837
Hog.	Hogan's Reports, Rolls Court (Ireland), 2 vols., 1816—1834
Holt (ADM.)	W. Holt's Rule of the Road Cases, Admiralty, 1 vol., 1863—1867
Holt (EQ.)	W. Holt's Equity Reports, 1 vol., 1845
Holt (K. B.)	Sir John Holt's Reports, King's Bench, fol., 1 vol., 1688—1710
Holt (N. P.)	F. Holt's Reports, Nisi Prius, 1 vol., 1815—1817
Home, Ct. of Sess. ..	Home's Decisions, Court of Session (Scotland), fol., 1 vol., 1735—1744
Hop. & Colt.	Hopwood and Coltman's Registration Cases, 2 vols., 1868—1878
Hop. & Ph.	Hopwood and Philbrick's Registration Cases, 1 vol., 1863—1867
Horn & H.	Horn and Hurlstone's Reports, Exchequer, 2 vols., 1838—1839
Hov. Suppl.	Hovenden's Supplement to Vesey Jun.'s Reports, Chancery, 2 vols., 1753—1817
Hud. & B.	Hudson and Brooke's Reports, King's Bench and Exchequer (Ireland), 2 vols., 1827—1831
Hume	Hume's Decisions, Court of Session (Scotland), 1 vol., 1781—1822
Hut.	Hutton's Reports, Common Pleas, fol., 1 vol., 1617—1638
Hy. Bl.	Henry Blackstone's Reports, Common Pleas, 2 vols., 1788—1796
I. C. L. R.	Irish Common Law Reports, 17 vols., 1849—1866
I. Ch. R.	Irish Chancery Reports, 17 vols., 1850—1867
I. Eq. R.	Irish Equity Reports, 13 vols., 1838—1851
I. L. R.	Irish Law Reports, 13 vols., 1838—1851

I. L. T.	Irish Law Times, 1867—(current)
I. R. (preceded by date)	Irish Reports, since 1893 (*e.g.* [1894] 1 I. R.)
I. R. C. L.	Irish Reports, Common Law, 11 vols., 1866—1877
I. R. Eq.	Irish Reports, Equity, 11 vols., 1866—1877
Ir. Circ. Cas.	Irish Circuit Cases, 1 vol., 1841—1843
Ir. Jur.	Irish Jurist, 18 vols., 1849—1866
Ir. L. Rec. 1st ser. ..	Law Recorder (Ireland) 1st series, 4 vols., 1827—1831
Ir. L. Rec. (N. S.) ..	Law Recorder (Ireland) New Series, 6 vols., 1833—1838
Irv.	Irvine's Justiciary Reports (Scotland), 5 vols., 1852—1867
J. Bridg.	Sir John Bridgman's Reports, Common Pleas, fol., 1 vol., 1613—1621
J. P.	Justice of the Peace, 1837—(current)
J. Shaw, Just.	J. Shaw's Justiciary Reports (Scotland), 1 vol., 1848—1852
Jac.	Jacob's Reports, Chancery, 1 vol., 1821—1823
Jac. & W.	Jacob and Walker's Reports, Chancery, 2 vols., 1819—1821
Jebb, C. C.	Jebb's Crown Cases Reserved (Ireland), 1 vol., 1822—1840
Jebb & B.	Jebb and Bourke's Reports, Queen's Bench (Ireland), 1 vol., 1841—1842
Jebb & S.	Jebb and Symes' Reports, Queen's Bench (Ireland), 2 vols., 1838—1841
Jenk.	Jenkins' Reports, 1 vol., 1220—1623
Jo. & Car.	Jones and Carey's Reports, Exchequer (Ireland), 1 vol., 1838—1839
Jo. & Lat.	Jones and La Touche's Reports, Chancery (Ireland), 3 vols., 1844—1846
Jo. Ex. Ir.	T. Jones' Reports, Exchequer (Ireland), 2 vols., 1834—1838
John.	Johnson's Reports, Chancery, 1 vol., 1858—1860
John. & H.	Johnson and Hemming's Reports, Chancery, 2 vols., 1860—1862
Jur.	Jurist Reports, 18 vols., 1837—1854
Jur. (N. S.)	Jurist Reports, New Series, 12 vols., 1855—1867
Just. Inst.	Justinian's Institutes
K. & G.	Keane and Grant's Registration Cases, 1 vol., 1854—1862
K. & J.	Kay and Johnson's Reports, Chancery, 4 vols., 1853—1858
K. B. (preceded by date)	Law Reports, King's Bench Division, since 1900 (*e.g.*, [1901] 2 K. B.)
Kames, Dict. Dec. ..	Kames, Dictionary of Decisions, Court of Session (Scotland), fol., 2 vols., 1540—1741
Kames, Rem. Dec. ..	Kames, Remarkable Decisions, Court of Session (Scotland), 2 vols., 1716—1752
Kames, Sel. Dec. ..	Kames, Select Decisions, Court of Session (Scotland), 1 vol., 1752—1768
Kay	Kay's Reports, Chancery, 1 vol., 1853—1854
Keb.	Keble's Reports, fol., 3 vols., 1661—1677
Keen	Keen's Reports, Rolls Court, 2 vols., 1836—1838
Keil.	Keilwey's Reports, King's Bench, fol., 1 vol., 1327—1578
Kel.	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662—1707
Kel. W.	W. Kelynge's Reports, fol., 1 vol., Chancery, 1730—1732; King's Bench, fol., 1731—1734
Keny.	Kenyon's Notes of Cases, King's Bench, 2 vols., 1753—1759

Keny. (CH.)	Chancery Cases in Vol. II. of Kenyon's Notes of Cases, 1753—1754
Kilkerran	Kilkerran's Decisions, Court of Session (Scotland), fol., 1 vol., 1738—1752
Knapp	Knapp's Reports, Privy Council, 3 vols., 1829—1836
Kn. & Omb.	Knapp and Ombler's Election Cases, 1 vol., 1834—1835
L. A.	Lord Advocate
L. & G. *temp.* Plunk. ..	Lloyd and Goold's Reports *temp.* Plunkett, Chancery (Ireland), 1 vol., 1834—1839
L. & G. *temp.* Sugd. ..	Lloyd and Goold's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1835
L. & Welsb.	Lloyd and Welsby's Commercial and Mercantile Cases, 1 vol., 1829—1830
L. G. R.	Local Government Reports, 1902—(current)
L. J.	Law Journal, 1866—(current)
L. J. (ADM.)	Law Journal, Admiralty, 1865—1875
L. J. (BCY.)	Law Journal, Bankruptcy, 1832—1880
L. J. (CH.)	Law Journal, Chancery, 1822—(current)
L. J. (C. P.)	Law Journal, Common Pleas, 1822—1875
L. J. (ECCL.)	Law Journal, Ecclesiastical Cases, 1866—1875
L. J. (EX.)	Law Journal, Exchequer, 1830—1875
L. J. (EX. EQ.)	Law Journal, Exchequer in Equity, 1835—1841
L. J. (K. B. or Q. B.) ..	Law Journal, King's Bench or Queen's Bench, 1822—(current).
L. J. (M. C.)	Law Journal Magistrates' Cases, 1826—1896
L. J. N. C.	Law Journal, Notes of Cases, 1866—1892 (from 1893, see Law Journal).
L. J. (O. S.)	Law Journal, Old Series, 10 vols., 1823—1831
L. J. (P.)	Law Journal, Probate, Divorce and Admiralty, 1875—(current)
L. J. (P. & M.)	Law Journal, Probate and Matrimonial Cases, 1858—1859, 1866—1875
L. J. (P. C.)	Law Journal, Privy Council, 1865—(current)
L. J. (P. M. & A.) ..	Law Journal, Probate, Matrimonial and Admiralty, 1860—1865
L. M. & P.	Lowndes, Maxwell, and Pollock's Reports, Bail Court and Practice, 2 vols., 1850—1851
L. R.	Law Reports
L. R. A. & E.	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols., 1865—1875
L. R. C. C. R.	Law Reports, Crown Cases Reserved, 2 vols., 1865—1875
L. R. C. P.	Law Reports, Common Pleas, 10 vols., 1865—1875
L. R. Eq.	Law Reports, Equity Cases, 20 vols., 1865—1875
L. R. Exch.	Law Reports, Exchequer, 10 vols., 1865—1875
L. R. H. L.	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols., 1866—1875
L. R. Ind. App. ..	Law Reports, Indian Appeals, Privy Council, 1873—(current)
L. R. Ind. App. Supp. Vol.	Law Reports, Indian Appeals, Privy Council, Supplementary Volume, 1872—1873
L. R. Ir.	Law Reports (Ireland), Chancery and Common Law 32 vols., 1877—1893
L. R. P. C.	Law Reports, Privy Council, 6 vols., 1865—1875
L. R. P. & D	Law Reports, Probate and Divorce, 3 vols., 1865—1875
L. R. Q. B.	Law Reports, Queen's Bench, 10 vols., 1865—1875
L. R. Sc. & Div. ..	Law Reports, Scotch and Divorce Appeals, House of Lords, 2 vols., 1866—1875
L. T.	Law Times Reports, 1859—(current)
L. T. Jo.	Law Times Newspaper, 1843—(current)
L. T. (O. S.)	Law Times Reports, Old Series, 34 vols., 1843—1860

Lane	Lane's Reports, Exchequer, fol., 1 vol., 1605—1611
Lat.	Latch's Reports, King's Bench, fol., 1 vol., 1625—1628
Laws. Reg. Cas. ..	Lawson's Registration Cases, 1885—(current)
Ld. Raym.	Lord Raymond's Reports, King's Bench and Common Pleas, 3 vols., 1694—1732
Leach	Leach's Crown Cases, 2 vols., 1730—1814
Lee	Sir G. Lee's Ecclesiastical Judgments, 2 vols., 1752—1758
Lee *temp.* Hard. ..	T. Lee's Cases *temp.* Hardwicke, King's Bench, 1 vol., 1733—1738
Le. & Ca.	Leigh and Cave's Crown Cases Reserved, 1 vol., 1861—1865
Leon.	Leonard's Reports, King's Bench, Common Pleas and Exchequer, fol., 4 parts, 1552—1615
Lev.	Levinz's Reports, King's Bench and Common Pleas, fol., 3 vols., 1660—1696
Lew. C. C.	Lewin's Crown Cases on the Northern Circuit, 2 vols., 1822—1838
Ley	Ley's Reports, King's Bench, fol., 1 vol., 1608—1629
Lib. Ass.	Liber Assisarum, Year Books, 1—51 Edw. III.
Lilly	Lilly's Reports and Pleadings of Cases in Assize, fol., 1 vol.
Litt.	Littleton's Reports, Common Pleas, fol., 1 vol., 1627—1631
Lofft	Lofft's Reports, King's Bench, fol., 1 vol., 1772—1774
Long. & T.	Longfield and Townsend's Reports, Exchequer (Ireland), 1 vol., 1841—1842
Lud. E. C.	Luders' Election Cases, 3 vols., 1784—1787
Lumley, P. L. C. ..	Lumley's Poor Law Cases, 2 vols., 1834—1842
Lush.	Lushington's Reports, Admiralty, 1 vol., 1859—1862
Lut.	Sir E. Lutwyche's Entries and Reports, Common Pleas, 2 vols., 1682—1704
Lut. Reg. Cas.	A. J. Lutwyche's Registration Cases, 2 vols., 1843—1853
Lynd.	Lyndwood, Provinciale, fol., 1 vol.
M. & S.	Maule and Selwyn's Reports, King's Bench, 6 vols., 1813—1817
M. & W.	Meeson and Welsby's Reports, Exchequer, 16 vols., 1836—1847
Mac. & G.	Macnaghten and Gordon's Reports, Chancery, 3 vols., 1849—1852
Mac. & H.	Macrae and Hertslet's Insolvency Cases, 1 vol., 1847—1852
M'Cle.	M'Cleland's Reports, Exchequer, 1 vol., 1824
M'Cle. & Yo.	M'Cleland and Younge's Reports, Exchequer, 1 vol., 1824—1825
Macfarlane	Macfarlane's Jury Trials, Court of Session (Scotland), 3 parts, 1838—1839
Macl. & Rob.	Maclean and Robinson's Scotch Appeals (House of Lords), 1 vol., 1839
Macph. (Ct. of Sess.) ..	Macpherson, Court of Session (Scotland), 3rd series, 11 vols., 1862—1873
Macq.	Macqueen's Scotch Appeals, House of Lords, 4 vols., 1849—1865
Macr.	Macrory's Patent Cases, 2 parts, 1847—1856
Madd.	Maddock's Reports, Chancery, 6 vols., 1815—1821
Madd. & G.	Maddock and Geldart's Reports, Chancery, 1 vol., 1819—1822 (Vol. VI. of Madd.)
Madox	Madox's Formulare Anglicanum
Madox, Exch.	Madox's History and Antiquities of the Exchequer, 2 vols.
Man. & G.	Manning and Granger's Reports, Common Pleas, 7 vols., 1840—1845

Man. & Ry. (K. B.) ..	Manning and Ryland's Reports, King's Bench, 5 vols., 1827—1830
Man. & Ry. (M. C.) ..	Manning and Ryland's Magistrates' Cases, 3 vols., 1827—1830
Mans.	Manson's Bankruptcy and Company Cases, 1893—(current)
Mar. L. C.	Maritime Law Reports (Crockford), 3 vols., 1860—1871
March	March's Reports, King's Bench and Common Pleas, 1 vol., 1639—1642
Marr.	Marriott's Decisions, Admiralty, 1 vol., 1776—1779
Marsh.	Marshall's Reports, Common Pleas, 2 vols., 1813—1816
Mayn.	Maynard's Reports, Exchequer Memoranda of Edw. I. and Year Books of Edw. II., Year Books, Part I., 1273—1326
Meg.	Megone's Companies Acts Cases, 2 vols., 1889—1891
Mer.	Merivale's Reports, Chancery, 3 vols., 1815—1817
Milw.	Milward's Ecclesiastical Reports (Ireland), 1 vol., 1819—1843
Mod. Rep.	Modern Reports, 12 vols., 1669—1755
Mol.	Molloy's Reports, Chancery (Ireland), 3 vols., 1808—1831
Mont.	Montagu's Reports, Bankruptcy, 1 vol., 1829—1832
Mont. & A.	Montagu and Ayrton's Reports, Bankruptcy, 3 vols., 1832—1838
Mont. & B.	Montagu and Bligh's Reports, Bankruptcy, 1 vol., 1832—1833
Mont. & Ch.	Montagu and Chitty's Reports, Bankruptcy, 1 vol., 1838—1840
Mont. D. & De G. ..	Montagu, Deacon, and De Gex's Reports, Bankruptcy, 3 vols., 1840—1844
Mont. & M.	Montagu and Macarthur's Reports, Bankruptcy, 1 vol., 1826—1830
Moo. P. C. C.	Moore's Privy Council Cases, 15 vols., 1836—1863
Moo. P. C. C. (N. S.) ..	Moore's Privy Council Cases, New Series, 9 vols., 1862—1873
Moo. Ind. App.	Moore's Indian Appeal Cases, Privy Council, 14 vols., 1836—1872
Moo. & P.	Moore and Payne's Reports, Common Pleas, 5 vols., 1827—1831
Moo. & S.	Moore and Scott's Reports, Common Pleas, 4 vols., 1831—1834
Mood. & M.	Moody and Malkin's Reports, Nisi Prius, 1 vol., 1826—1830
Mood. & R.	Moody and Robinson's Reports, Nisi Prius, 2 vols., 1830—1844
Mood. C. C.	Moody's Crown Cases Reserved, 2 vols., 1824—1844
Moore (K. B.)	Sir F. Moore's Reports, King's Bench, fol., 1 vol., 1485—1620
Moore (C. P.)	J. B. Moore's Reports, Common Pleas, 12 vols., 1817—1827
Mor. Dict.	Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols., 1532—1808
Morr.	Morrell's Reports, Bankruptcy, 10 vols., 1884—1893
Mos.	Moseley's Reports, Chancery, fol., 1 vol., 1726—1730
Murp. & H.	Murphy and Hurlstone's Reports, Exchequer, 1 vol., 1837
Murr.	Murray's Reports, Jury Court (Scotland), 5 vols., 1816—1830
My. & Cr.	Mylne and Craig's Reports, Chancery, 5 vols., 1835—1841
My. & K.	Mylne and Keen's Reports, Chancery, 3 vols., 1832—1835

Nels.	Nelson's Reports, Chancery, 1 vol., 1625—1692
Nev. & M. (K. B.)	Nevile and Manning's Reports, King's Bench, 6 vols., 1832—1836
Nev. & M. (M. C.)	Nevile and Manning's Magistrates' Cases, 3 vols., 1832—1836
Nev. & P. (K. B.)	Nevile and Perry's Reports, King's Bench, 3 vols., 1836—1838
Nev. & P. (M. C.)	Nevile and Perry's Magistrates' Cases, 1 vol., 1836—1837
New Mag. Cas...	New Magistrates' Cases (Bittleston, Wise and Parnell), 2 vols., 1844—1848
New Pract. Cas.	New Practice Cases (Bittleston and Wise), 3 vols., 1844—1848
New Rep. ..	New Reports, 6 vols., 1862—1865
New Sess. Cas. ..	New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc.), 4 vols., 1844—1851
Nolan	Nolan's Magistrates' Cases, 1 vol., 1791—1793
Notes of Cases ..	Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols., 1841—1850
Noy	Noy's Reports, King's Bench, fol., 1 vol., 1558—1649
O. Bridg. ..	Sir Orlando Bridgman's Reports, Common Pleas, 1 vol., 1660—1666
O'M. & H. ..	O'Malley and Hardcastle's Election Cases, 1869—(current)
Owen	Owen's Reports, King's Bench and Common Pleas, fol., 1 vol., 1557—1614
P. (preceded by date) ..	Law Reports, Probate, Divorce, and Admiralty Division, since 1890 (*e.g.*, [1891] P.)
P. D.	Law Reports, Probate, Divorce, and Admiralty Division, 15 vols., 1875—1890
P. Wms... ..	Peere Williams' Reports, Chancery and King's Bench, 3 vols., 1695—1735
Palm.	Palmer's Reports, King's Bench, fol., 1 vol., 1619—1629
Park.	Parker's Reports, Exchequer, fol., 1 vol., 1743—1766
Pat. App. ..	Paton's Scotch Appeals, House of Lords, 6 vols., 1726—1822
Pater. App. ..	Paterson's Scotch Appeals, House of Lords, 2 vols., 1851—1873
Peake	Peake's Reports, Nisi Prius, 1 vol., 1790—1794
Peake, Add. Cas.	Peake's Additional Cases, Nisi Prius, 1 vol., 1795—1812
Peck.	Peckwell's Election Cases, 2 vols., 1803—1804
Per. & Dav. ..	Perry and Davison's Reports, Queen's Bench, 4 vols., 1838—1841
Per. & Kn. ..	Perry and Knapp's Election Cases, 1 vol., 1833
Ph.	Phillips' Reports, Chancery, 2 vols., 1841—1849
Phil. El. Cas. ..	Philipps' Election Cases, 1 vol., 1780
Phillim.	J. Phillimore's Ecclesiastical Reports, 3 vols., 1754—1821
Phillim. Eccl. Jud.	Sir R. Phillimore's Ecclesiastical Judgments, 1 vol., 1867—1875
Pig. & R. ..	Pigott and Rodwell's Registration Cases, 1 vol., 1843—1845
Pitc.	Pitcairn's Criminal Trials (Scotland), 3 vols., 1488—1624
Plowd.	Plowden's Reports, fol., 2 vols., 1550—1579
Poll.	Pollexfen's Reports, King's Bench, fol., 1 vol. 1670—1682
Poph.	Popham's Reports, King's Bench, fol., 1 vol., 1591—1627

Pow. R. & D.	Power, Rodwell, and Dew's Election Cases, 2 vols., 1848—1856
Prec. Ch...	Precedents in Chancery, fol., 1 vol., 1689—1722
Price	Price's Reports, Exchequer, 13 vols., 1814—1824
Q. B.	Queen's Bench Reports (Adolphus and Ellis, New Series), 18 vols., 1841—1852
Q. B. (preceded by date)	Law Reports, Queen's Bench Division, 1891—1901 (*e.g.*, [1891] 1 Q. B.)
Q. B. D.	Law Reports, Queen's Bench Division, 25 vols., 1875—1890
R.	The Reports, 15 vols., 1893—1895
R. (Ct. of Sess.)	Rettie, Court of Session Cases (Scotland), 4th series, 25 vols., 1873—1898
R. P. C.	Reports of Patent Cases, 1884—(current)
R. R.	Revised Reports
R. S. C.	Rules of the Supreme Court
Rast.	Rastell's Entries
Rayn.	Rayner's Tithe Cases, 3 vols., 1575—1782
Real Prop. Cas... ..	Real Property Cases, 2 vols., 1843—1847
Rep. Ch...	Reports in Chancery, fol., 3 vols., 1615—1710
Rick. & M.	Rickards and Michael's Locus Standi Reports, 1 vol., 1885—1889
Rick. & S.	Rickards and Saunders' Locus Standi Reports, 1 vol., 1890—1894
Ridg. *temp.* H.	Ridgeway's Reports, *temp.* Hardwicke, 1 vol., King's Bench, 1733—1736; Chancery, 1744—1746.
Ridg. L. & S.	Ridgeway, Lapp, and Schoales' Reports (Ireland), 1 vol., 1793—1795
Ridg. Parl. Rep. ..	Ridgeway's Parliamentary Reports (Ireland), 3 vols., 1784—1796
Rob. Eccl.	Robertson's Ecclesiastical Reports, 2 vols., 1844—1853
Rob. L. & W.	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol., 1849—1851
Robert. App.	Robertson's Scotch Appeals, House of Lords, 1 vol., 1709—1727
Robin. App.	Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841
Roll. Abr.	Rolle's Abridgment of the Common Law, fol., 2 vols.
Roll. Rep.	Rolle's Reports, King's Bench, fol., 2 vols., 1614—1625
Rom.	Romilly's Notes of Cases in Equity, 1 part, 1772—1787
Rose	Rose's Reports, Bankruptcy, 2 vols., 1810—1816
Ross, L. C.	Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols.
Rowe	Rowe's Reports (England and Ireland), 1 vol., 1798—1823
Rul. Cas.	Campbell's Ruling Cases, 25 vols.
Russ.	Russell's Reports, Chancery, 5 vols., 1824—1829
Russ. & M.	Russell and Mylne's Reports, Chancery, 2 vols., 1829—1833
Russ. & Ry.	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823
Ry. & Can. Cas. ..	Railway and Canal Cases, 7 vols., 1835—1854
Ry. & Can. Tr. Cas. ..	Railway and Canal Traffic Cases, 1855—(current)
Ry. & M.	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826
S. C.	Same Case
S. C. (preceded by date)	Court of Session Cases (Scotland), since 1906 (*e.g.*, [1908] S. C.)
S.-G.	Solicitor-General
Saint	Saint's Digest of Registration Cases, 1843—1906, 1 vol.

Salk.	Salkeld's Reports, King's Bench, 3 vols., 1689—1712
Sau. & Sc.	Sausse and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837—1840
Saund.	Saunders's Reports, King's Bench, 2 vols., 1666—1672
Saund. & A.	Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904
Saund. & B.	Saunders and Bidder's Locus Standi Reports, 1905—(current)
Saund. & C.	Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848
Saund. & M.	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols., 1852—1858
Sav.	Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591
Say.	Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756
Sc. Jur.	Scottish Jurist, 46 vols., 1829—1873
Sc. L. R.	Scottish Law Reporter, 1865—(current)
Sch. & Lef.	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806
Sc. R. R... . ..	Scots Revised Reports
Scott	Scott's Reports, Common Pleas, 8 vols., 1834—1840
Scott (N. R.	Scott's New Reports, Common Pleas, 8 vols., 1840—1845
Sea. & Sm.	Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—1860
Sel. Cas. Ch.	Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt. III. of Cas. in Ch.)
Sess. Cas. (K. B.) ..	Sessions Settlement Cases, King's Bench, 2 vols., 1710—1747
Sh. & Macl.	Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols., 1835—1838
Sh. (Ct. of Sess.) ..	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols., 1821—1838
Sh. Dig.	P. Shaw's Digest of Decisions (Scotland), ed. by Bell and Lamond, 3 vols, 1726—1868
Sh. Just...	P. Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831
Sh. Sc. App.	P. Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824
Sh. Teind Ct.	P. Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831
Shep. Touch.	Sheppard's Touchstone of Common Assurances
Show.	Shower's Reports, King's Bench, 2 vols., 1678—1695
Show. Parl. Cas. ..	Shower's Cases in Parliament, fol., 1 vol., 1694—1699
Sid.	Siderfin's Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1657—1670
Sim.	Simons' Reports, Chancery, 17 vols., 1826—1852
Sim. (N. S.)	Simons' Reports, Chancery, New Series, 2 vols., 1850—1852
Sim. & St.	Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826
Skin.	Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697
Sm. & Bat.	Smith and Batty's Reports, King's Bench (Ireland), 1 vol., 1824—1825
Sm. & G...	Smale and Giffard's Reports, Chancery, 3 vols., 1852—1858
Smith, K. B.	J. P. Smith's Reports, King's Bench, 3 vols., 1803—1806
Smith, L. C.	Smith's Leading Cases, 2 vols.
Smith, Reg. Cas. ..	C. L. Smith's Registration Cases, 1895—(current)

Smythe	Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840
Sol. Jo.	Solicitors' Journal, 1856—(current)
Spinks	Spinks' Prize Court Cases, 2 parts, 1854—1856
Stair Rep.	Stair's Decisions, Court of Session (Scotland), fol., 2 vols., 1661—1681
Stark.	Starkie's Reports, Nisi Prius, 3 vols., 1814—1823
Stat. R. & O. Rev. ..	Statutory Rules and Orders Revised
State Tr.	State Trials, 34 vols., 1163—1820
State Tr. (N. S.)	State Trials, New Series, 8 vols., 1820—1858
Stra.	Strange's Reports, 2 vols., 1716—1747
Stu. M. & P.	Stuart, Milne, and Peddie's Reports (Scotland), 2 vols., 1851—1853
Sty.	Style's Reports, King's Bench, fol., 1 vol., 1646—1655
Sw.	Swabey's Reports, Admiralty, 1 vol., 1855—1859
Sw. & Tr.	Swabey and Tristram's Reports, Probate and Divorce, 4 vols., 1858—1865
Swan.	Swanston's Reports, Chancery, 3 vols., 1818—1821
Swin.	Swinton's Justiciary Reports (Scotland), 2 vols., 1835—1841
Syme	Syme's Justiciary Reports (Scotland), 1 vol., 1826—1829
T. & M.	Temple and Mew's Criminal Appeal Cases, 1 vol., 1848—1851
T. Jo.	Sir T. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1669—1684
T. L. R.	The Times Law Reports, 1884—(current)
T. Raym.	Sir T. Raymond's Reports, King's Bench, fol., 1 vol., 1660—1683
Taml.	Tamlyn's Reports, Rolls Court, 1 vol., 1829—1830
Taunt.	Taunton's Reports, Common Pleas, 8 vols., 1807—1819
Tax Cas.	Tax Cases, 1875—(current)
Term Rep.	Term Reports (Durnford and East), fol., 8 vols., 1785—1800
Toth.	Tothill's Transactions in Chancery, 1 vol., 1559—1646
Trist.	Tristram's Consistory Judgments, 1 vol., 1873—1892
Tudor, L. C. Merc. Law	Tudor's Leading Cases on Mercantile and Maritime Law
Tudor, L. C. Real Prop. ..	Tudor's Leading Cases on Real Property
Turn. & R.	Turner and Russell's Reports, Chancery, 1 vol., 1822—1825
Tyr.	Tyrwhitt's Reports, Exchequer, 5 vols., 1830—1835
Tyr. & Gr.	Tyrwhitt and Granger's Reports, Exchequer, 1 vol., 1835—1836
Vaugh.	Vaughan's Reports, Common Pleas, fol., 1 vol., 1666—1673
Vent.	Ventris' Reports (Vol. I., King's Bench; Vol. II., Common Pleas), fol., 2 vols., 1668—1691
Vern.	Vernon's Reports, Chancery, 2 vols., 1680—1719
Vern. & Scr.	Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol., 1786—1788
Ves.	Vesey Jun.'s Reports, Chancery, 19 vols., 1789—1817
Ves. & B.	Vesey and Beames's Reports, Chancery, 3 vols., 1812—1814
Ves. Sen.	Vesey Sen.'s Reports, 2 vols., 1747—1756
Vin. Abr.	Viner's Abridgment of Law and Equity, fol., 22 vols.
Vin. Supp.	Supplement to Viner's Abridgment of Law and Equity, 6 vols.
W. Jo.	Sir W. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1620—1640

W. N. (preceded by date)	Law Reports, Weekly Notes, 1866—(current (*e.g.*, [1866] W. N.)
W. R.	Weekly Reporter, 54 vols., 1852—1906
Wallis	Wallis's Reports, Chancery (Ireland), 1 vol., 1766—1791
Web. Pat. Cas. ..	Webster's Patent Cases, 2 vols., 1602—1855
Welsh, Reg. Cas. ..	Welsh's Registry Cases (Ireland), 1 vol., 1832—1840
Went. Off. Ex.	Wentworth's Office and Duty of Executors
West	West's Reports, House of Lords, 1 vol., 1839—1841
West *temp.* Hard. ..	West's Reports *temp.* Hardwicke, Chancery, 1 vol., 1736—1740
West. Tithe Cas. ..	Western's London Tithe Cases, 1 vol., 1592—1822
White	White's Justiciary Reports (Scotland), 3 vols., 1886—1893
White & Tud. L. C. ..	White and Tudor's Leading Cases in Equity, 2 vols.
Wight.	Wightwick's Reports, Exchequer, 1 vol., 1810—1811
Will. Woll. & Dav. ..	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol., 1837
Will. Woll. & H. ..	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols., 1838—1839
Willes	Willes' Reports, Common Pleas, 1 vol., 1737—1758
Wilm.	Wilmot's Notes of Opinions and Judgments, 1 vol., 1757—1770
Wils.	G. Wilson's Reports, King's Bench and Common Pleas, fol., 3 vols., 1742—1774
Wils. & S.	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols., 1825—1835
Wils. (CH.)	J. Wilson's Reports, Chancery, 2 vols., 1818—1819
Wils. (EX.)	J. Wilson's Reports, Exchequer in Equity, 1 part, 1817
Win.	Winch's Reports, Common Pleas, fol., 1 vol., 1621—1625
Wm. Bl.	William Blackstone's Reports, King's Bench and Common Pleas, fol., 2 vols., 1746—1779
Wm. Rob.	William Robinson's Reports, Admiralty, 3 vols., 1838—1850
Wms. Saund.	Williams' Notes to Saunders' Reports, 2 vols.
Wolf. & B.	Wolferstan and Bristowe's Election Cases, 1 vol., 1859—1864
Wolf. & D.	Wolferstan and Dew's Election Cases, 1 vol., 1857—1858
Woll.	Wollaston's Reports, Bail Court and Practice, 1 vol., 1840—1841
Wood	Wood's Tithe Cases, Exchequer, 4 vols., 1650—1798
Y. & C. Ch. Cas. ..	Younge and Collyer's Reports, Chancery Cases, 2 vols., 1841—1843
Y. & C. (EX.)	Younge and Collyer's Reports, Exchequer in Equity, 4 vols., 1834—1842
Y. & J.	Younge and Jervis' Reports, Exchequer, 3 vols., 1826—1830
Y. B.	Year Books
Yelv.	Yelverton's Reports, King's Bench, fol., 1 vol., 1602—1613
You.	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832

TABLE OF STATUTES.

		PAGE
3 Edw. 1, c. 5.	(Statute of Westminster I., 1275)	278
8 Hen. 6, c. 7.	(Parliamentary Electors Qualification 1429)	146, 148, 177, 180
10 Hen. 6, c. 2.	(Parliamentary Electors (Qualification), 1432)	146
27 Hen. 8, c. 26.	(Wales (Incorporation with England), 1535–6)	262
2 & 3 Edw. 6, c. 1.	(Act of Uniformity, 1548), s. 2	99
13 Eliz. c. 29.	(Incorporation of Oxford and Cambridge Universities, 1571)	91, 94, 95
18 Eliz. c. 6.	(Maintenance of Colleges in the Universities, and Winchester and Eton, 1576)	98
39 Eliz. c. 5.	(Hospitals, etc. for the Poor, 1597)	149
14 Car. 2, c. 4.	(Act of Uniformity, 1662), s. 18	99
1 Will. & Mar. c. 18.	(Toleration Act, 1688)	108
7 & 8 Will. 3, c. 7.	(False and Double Returns of Members of Parliament, 1695)	538
	s. 1	332
	s. 2	332
	s. 5	331, 333
	s. 6	333
c. 25.	(Lord Somers' Act, 1695)	139
	s. 1	257, 262
	s. 2	261
	s. 5	538
	s. 6	153, 261, 312
12 & 13 Will. 3, c. 2.	(Act of Settlement, 1700), s. 3	136
10 Anne, c. 31.	(Elections (Fraudulent Conveyances) Act, 1711), s. 1...153,537	
11 Geo. 1, c. 18.	(Act for regulating Elections within the City of London, 1724), s. 14	181
4 Geo. 2, c. 28.	(Landlord and Tenant Act, 1730), s. 5	148
13 Geo. 2, c. 20.	(Parliamentary Elections (Fraudulent Conveyances) Act, 1739)	538
14 Geo. 2, c. 28.	(House of Commons (Electors) Act, 1741), s. 4	153
18 Geo. 2, c. 18.	(Parliamentary Elections Act, 1744)—	
	s. 5	153
	s. 6	151
19 Geo. 2, c. 28.	(Parliamentary Elections Act, 1745)	180
	s. 4	153
24 Geo. 3, sess. 2, c. 26.	(Recess Elections Act, 1784), s. 2	258
33 Geo. 3, c. 64.	(Parliamentary Elections Act, 1793), s. 1	263
38 Geo. 3, c. 5.	(Land Tax Act, 1797), s. 25	98
53 Geo. 3, c. 49.	(Parliamentary Elections Act, 1813), s. 1	153
c. 89.	(Parliamentary Writs Act, 1813)—	
	ss. 1—3	258
	s. 6	531
56 Geo. 3, c. 139.	(Parish Apprentices Act, 1816)	144
59 Geo. 3, c. 12.	(Poor Relief Act, 1819), s. 7	194
3 Geo. 4, c. 46.	(Levy of Fines Act, 1822)	480
6 Geo. 4, c. 97.	(Universities Act, 1825)	94, 95
10 Geo. 4, c. 7.	(Roman Catholic Relief Act, 1829), s. 16	99
c. 44.	(Metropolitan Police Act, 1829)—	
	s. 5	539
	s. 6	539
	s. 18	539

		PAGE
1 & 2 Will. 4, c. 45.	(Augmentation of Benefices Act, 1831)—	
	s. 11	93
	s. 12	93
	s. 29	93
2 & 3 Will. 4, c. 45.	(Representation of the People Act, 1832)	179, 185, 186, 533
	s. 11	259, 260
	s. 16	262
	s. 18	146, 147, 148, 177, 180
	s. 20	140, 154, 155, 156
	s. 21	151
	s. 22	151
	s. 23	147, 150
	s. 24	152, 154
	s. 25	154, 155
	s. 26	146, 148, 154, 156
	s. 27	158, 159, 161, 185, 186, 224, 227
	s. 28	158, 159
	s. 29	159, 224
	s. 30	171
	s. 31	139, 180
	s. 32	139, 178, 179, 181
	s. 35	178
	s. 36	142, 144, 199
	s. 68	310
	s. 76	538
	s. 79	194, 195
c. 88.	(Representation of the People (Ireland) Act, 1832)	155
3 & 4 Will. 4, c. 90.	(Lighting and Watching Act, 1833)	643
	s. 45	643
	s. 46	643
	s. 47	643
4 & 5 Will. 4, c. 76.	(Poor Law Amendment Act, 1834)—	
	s. 15	82
	s. 19	89, 90
	s. 42	82
	s. 46	82
	s. 56	143
	s. 57	143
	s. 58	144
	s. 109	82
5 & 6 Will. 4, c. 36.	(Parliamentary Elections Act, 1835), s. 8	277, 308, 331
c. 76.	(Municipal Corporations Act, 1835)	190
	s. 2	189
	s. 9	184, 185, 286
6 & 7 Will. 4, c. 86.	(Births and Deaths Registration Act, 1836)	66
7 Will. 4 & 1 Vict. c. 22.	(Births and Deaths Registration Act, 1837)	66
c. 56.	(Attorneys and Solicitors), s. 1	95
2 & 3 Vict. c. 71.	(Metropolitan Police Courts Act, 1839)	611
3 & 4 Vict. c. 77.	(Grammar Schools Act, 1840)	99, 102, 103, 116, 117, 121
	s. 1	116
	s. 3	116
	s. 4	116
	s. 5	116
	s. 7	116
	s. 8	116
	s. 9	116
	s. 10	116
	s. 19	121
	s. 24	97, 116
	s. 25	116
c. 113.	(Ecclesiastical Commissioners Act, 1840)	93
	s. 69	98
	s. 70	98
4 & 5 Vict. c. 38.	(School Sites Act, 1841)	117, 118, 120
	s. 2	118, 119
	s. 3	118, 119
	s. 6	119

		PAGE
4 & 5 Vict. c. 38.	(School Sites Act, 1841)—	
	s. 7	117
	s. 8	120
	s. 9	119
	s. 10	119
	s. 11	118
	s. 13	118
	s. 14	120
	s. 15	120
	s. 17	121
	s. 18	121
	s. 20	119
5 & 6 Vict. c. 35.	(Income Tax Act, 1842)—	
	s. 61	93, 97
	Sched. A	93, 97
c. 57.	(Poor Law Amendment Act, 1842)	86
6 & 7 Vict. c. 18.	(Parliamentary Voters Registration Act, 1843)	200, 210, 247, 481
	s. 3	195
	s. 4	199, 205, 206, 224, 226
	s. 5	201, 202, 227
	s. 6	209, 229
	s. 7	209, 210, 212, 213, 214
	s. 8	217
	s. 10	195
	s. 11	197
	s. 12	198
	s. 13	203, 209
	s. 14	202, 209
	s. 15	206, 208, 217
	s. 17	209, 210, 214
	s. 18	217
	s. 20	202, 208, 209, 210
	s. 22	194
	s. 23	199
	s. 24	200
	s. 25	538
	s. 26	200
	s. 27	200
	s. 28	218, 219
	s. 29	219
	s. 31	219
	s. 32	220
	s. 33	220
	s. 34	221, 222
	s. 35	221, 222
	s. 36	237
	s. 37	206, 228, 229
	s. 38	228, 229
	s. 39	229, 238
	s. 41	221, 222, 237, 531
	s. 42	249, 250
	s. 43	250, 251
	s. 44	252
	s. 45	253
	s. 46	238, 239
	s. 47	237, 241, 242, 243, 244
	s. 48	237, 241, 243, 244
	s. 49	139, 244
	s. 51	533
	s. 52	533
	s. 53	240, 241, 246
	s. 54	247
	s. 55	240, 247
	s. 56	195
	s. 57	239, 240, 241
	s. 64	251
	s. 65	248, 254
	s. 66	256

		PAGE
6 & 7 Vict. c. 18.	(Parliamentary Voters Registration Act, 1843)—	
	s. 67	256, 257
	s. 68	256
	s. 70	256
	s. 71	533
	s. 73	156
	s. 74	147, 150
	s. 75	157
	s. 79	283, 455
	s. 81	319, 530
	s. 82	319
	s. 85	321
	s. 86	525, 526
	s. 87	525, 526
	s. 88	525, 526
	s. 89	525, 527
	s. 90	525, 527
	s. 97	537, 538
	s. 100	214, 215, 216, 231
	s. 101	194, 195, 200, 207, 211, 212
	Sched. B	202, 208, 212, 217
	Sched. C	202, 208, 210, 212, 217
	Sched. D	195, 202, 244
c. 73.	(Solicitors Act, 1843), s. 21	410
7 & 8 Vict. c. 37.	(School Sites Act, 1844)	117
	s. 1	120
	s. 2	120
	s. 3	118
	s. 4	120
	s. 5	119
c. 101.	(Poor Law Amendment Act, 1844)—	
	s. 40	85
	s. 42	86
	s. 43	85, 86, 87, 89, 90
	s. 44	86, 88
	s. 45	86
	s. 46	87, 88
	s. 47	87
	s. 49	88
	s. 51	83
8 & 9 Vict. c. 18.	(Lands Clauses Consolidation Act, 1845)	27, 549
	s. 68	125, 574
	s. 121	125
	s. 123	568
c. 20.	(Railways Clauses Consolidation Act, 1845)	573, 574
	ss. 140—144	610
	s. 145	610, 611
	ss. 148—149	610
	s. 150	610, 611
	s. 152	610
	s. 153	610, 611
	ss. 154—156	610
	s. 157	610, 611
	ss. 158—160	610
10 & 11 Vict. c. 15.	(Gasworks Clauses Act, 1847)	550, 572, 608
	s. 3	549, 573
	s. 6	573, 574, 578, 584, 585
	s. 7	573, 574, 584
	s. 8	573, 575, 584
	s. 9	573, 578, 584
	s. 10	573, 575, 584
	s. 11	573, 576, 584
	s. 12	573, 574, 576, 584
	s. 13	613
	s. 14	578, 613
	s. 18	612, 613
	s. 19	613
	s. 20	613
	s. 29	564 565

		PAGE
10 & 11 Vict. c. 15.	(Gasworks Clauses Act, 1847)—	
	s. 40	574, 610
	s. 42	611
	s. 43	611
	s. 44	611
	s. 45	611
	s. 46	612
c. 17.	(Waterworks Clauses Act, 1847)—	
	s. 3	549
	s. 12	574
	ss. 18—27	585
	ss. 28—34	584
c. 21.	(Parliamentary Elections (Soldiers) Act, 1847)	311
	s. 2	311
11 & 12 Vict. c. 43.	(Summary Jurisdiction Act, 1848), s. 11	582
c. 82.	(Poor Law (Schools) Act, 1848)—	
	s. 1	85, 88
	s. 2	86
c. 98.	(Elections Petitions Act, 1848), s. 13	421
12 & 13 Vict. c. 49.	(School Sites Act, 1849)	117
	s. 1	119
	s. 3	119
	s. 4	118, 119
	s. 5	119
	s. 6	119
c. xciv.	(City of London Municipal Elections Act, 1849)	190
	s. 2	190
	s. 6	395
13 & 14 Vict. c. 98.	(Pluralities Act, 1850)—	
	s. 5	99
	s. 6	95
14 & 15 Vict. c. 14.	(Householders' Act, 1851), s. 1	171
c. 24.	(School Sites Act, 1851)	117
	s. 1	119
c. 36.	(House Tax Act, 1851)	197
c. 105.	(Poor Law Amendment Act, 1851)—	
	s. 6	82
	s. 17	86, 87
15 & 16 Vict. c. 49.	(School Sites Act, 1852)	117, 118
c. 57.	(Election Commissioners Act, 1852)	138, 219, 466
	s. 1	463, 464
	s. 3	464
	s. 4	465
	s. 5	465
	s. 6	465, 466, 469
	s. 7	470
	s. 8	466, 467
	s. 11	468
	s. 12	468, 537
	s. 13	468, 531
	s. 14	471
	s. 16	472
c. 76.	(Common Law Procedure Act, 1852)—	
	s. 228	441
c. 125.	(Election Commissioners Act, 1852)	138
16 & 17 Vict. c. 34.	(Income Tax Act, 1853), s. 5	93
c. 68.	(Parliamentary Elections Act, 1853)—	
	s. 1	258
	s. 4	325
	s. 5	323
	s. 6	310
c. 99.	(Penal Servitude Act, 1853), ss. 9—11.	141
c. 137.	(Charitable Trusts Act, 1853)	5, 24, 106
17 & 18 Vict. c. 34.	(Attendance of Witnesses Act, 1854), s. 1	440
c. 57.	(Returning Officers Act, 1854), s. 1	260
c. 81.	(Oxford University Act, 1854)—	
	s. 5	94
	s. 6	94, 193
	s. 8	94

		PAGE
17 & 18 Vict. c. 81.	(Oxford University Act, 1854)—	
	s. 9	94
	s. 10	94
	s. 11	94
	s. 12	94
	s. 13	94
	s. 14	94
	s. 15	94
	s. 16	94, 193
	s. 17	94
	s. 18	94
	s. 19	94
	s. 20	94
	s. 21	94
	s. 22	94, 181
	s. 25	94
	s. 26	94
	s. 40	94
	s. 45	181
c. 84.	(Augmentation of Benefices Act, 1854)	93
c. 102.	(Corrupt Practices Prevention Act, 1854)	257, 281, 334
	s. 2	270, 539
	(1)	284
	(2)	284, 448
	(3)	285
	(4)	285
	(5)	285
	s. 3 (1)	285
	(2)	286
	ss. 12, 13	529
	s. 38	281, 283, 284, 285
c. 125.	(Common Law Procedure Act, 1854)	441
	s. 22	441
	ss. 19—32	441
	s. 51	441
	s. 99	441, 442
	s. 103	441
	s. 105	441
18 & 19 Vict. c. 120.	(Metropolis Management Act, 1855)	397
	s. 130	643, 644
	ss. 183—191	553
	s. 250	88, 549
	Sched. A	242
	Sched. B	242
	Sched. C	242
c. 124.	(Charitable Trusts Amendment Act, 1855)	24, 106
	s. 49	98
c. 131.	(School Grants Act, 1855), s. 1	120
19 & 20 Vict. c. 88.	(Cambridge University Act, 1856)	193
	s. 5	95
	s. 6	95
	s. 21	95
	s. 23	95
	s. 24	95
	s. 43	95
	s. 49	182
c. 116.	(Education Department Act, 1856)	6
20 & 21 Vict. c. 25.	(Oxford University Act, 1857), s. 3	93
21 & 22 Vict. c. 25.	(Births and Deaths Registration Act, 1858)	66
c. 44.	(Universities and College Estates Act, 1858)—	
	s. 27	93
	s. 30	98
c. 59.	(Erection and Endowment of Churches etc. in Ireland, 1858), s. 27	93
c. 90.	(Medical Act, 1858)	91
23 & 24 Vict. c. 11.	(Endowed Schools Act, 1860)	5, 102, 116
	s. 1	117
	s. 2	117

		PAGE
23 & 24 Vict. c. 59.	(Universities and College Estates Extension Act, 1860)—	
	s. 1	93
	s. 7	93, 98
	s. 8	98
	s. 9	98
	s. 10	98
	s. 11	93
c. 106.	(Lands Clauses Consolidation Act, 1860)	549
c. 126.	(Common Law Procedure Act, 1860), s. 44	441
c. 136.	(Charitable Trusts Act, 1860)	24, 106
	s. 13	121
24 & 25 Vict. c. 53.	(University Elections Act, 1861)	324
	s. 1	324
	s. 2	259, 325
	s. 3	325
	s. 4	331
	s. 5	532
c. 82.	(Durham University Act, 1861)	95
25 & 26 Vict. c. 26.	(Oxford University Act, 1862)—	
	s. 7	94
	s. 8	94
	s. 9	94
	s. 10	94
c. 43.	(Poor Law (Certified Schools) Act, 1862)—	
	s. 1	84
	s. 2	85
	s. 3	84
	s. 4	85
	s. 5	84
	s. 6	84
	s. 7	84
	s. 8	84
	s. 9	90
	s. 10	83, 85
c. 112.	(Charitable Trusts Act, 1862)	24, 106
26 & 27 Vict. c. 20.	(Elections in Recess Act, 1863), s. 1	258
c. 29.	(Corrupt Practices Prevention Act, 1863)—	
	s. 6	529
	s. 7	467
c. 112.	(Telegraph Act, 1863)	572, 584
28 & 29 Vict. c. 18.	(Criminal Procedure Act, 1865)—	
	s. 1	451
	s. 6	451
c. 36.	(County Voters Registration Act, 1865)—	
	s. 3	195, 199
	s. 6	213, 214, 230
	s. 7	214, 230
	s. 8	230, 238
	s. 9	214, 215, 216
	s. 10	206
	s. 13	238
	s. 14	238
	s. 15	237
	s. 16	222
	s. 17	214
29 & 30 Vict. c. 3.	(Telegraph Act Amendment Act, 1866)	572, 584
c. 54.	(Revising Barristers Act, 1866), s. 1	219
c. 113.	(Poor Law Amendment Act, 1866)—	
	s. 14	90
	s. 16	82, 83
30 Vict. c. i.	(City of London Municipal Elections Amendment Act, 1867)	190
	s. 2	190
	s. 3	190
	s. 4	190
30 & 31 Vict. c. 6.	(Metropolitan Poor Act, 1867)—	
	s. 3	88
	s. 47	87
	s. 48	87

		PAGE
30 & 31 Vict. c. 6.	(Metropolitan Poor Act, 1867)—	
	s. 49	89
	s. 55	87
	s. 69	89
c. 84.	(Vaccination Act, 1867), s. 26	142, 192
c. 102.	(Representation of the People Act, 1867)	227, 247, 457
	s. 2	163, 175
	s. 3	155, 157, 163, 166, 167, 170, 172, 224
	ss. 3—5	140
	s. 4	175, 176, 177
	s. 5	147, 148, 153, 154, 155, 180
	s. 6	156, 157, 162
	(3)	157
	s. 7	70
	s. 11	264, 268, 456, 457, 530
	s. 24	96, 182
	s. 25	96, 182
	s. 26	158, 159, 165, 174, 191
	s. 27	157
	s. 28	172, 197
	s. 29	198
	s. 30	207, 230
	(2)	207
	s. 31	247
	s. 34	220, 242, 308
	s. 37	310
	s. 38	241, 244
	s. 40	96, 142, 144
	s. 41	258, 259
	s. 42	263, 278
	s. 43	326
	s. 44	323
	s. 45	96, 324
	s. 46	158, 181
	s. 49	264, 286
	s. 50	264, 530
	s. 56	155
	s. 59	155
	s. 61	194
c. 106.	(Poor Law Amendment Act, 1867), s. 16	85
31 & 32 Vict. c. 32.	(Endowed Schools Act, 1868)	102
	s. 2	100
	s. 4	100
	s. 5	100
c. 37.	(Documentary Evidence Act, 1868)	8
c. 48.	(Representation of the People (Scotland) Act, 1868)—	
	s. 37	259, 263
	s. 49	286
c. 58.	(Parliamentary Electors Registration Act, 1868)	212
	s. 18	195, 242
	s. 25	218
	s. 28	221
	s. 29	222
	s. 30	157
	s. 31	240, 241
	s. 32	240
	s. 37	244
c. 65.	(University Elections Act, 1868)	95
	s. 1	325
	s. 2	325
	s. 3	333
	s. 4	333
	s. 6	325
c. 110.	(Telegraph Act, 1868)	572, 584
c. 118.	(Public Schools Act, 1868)	97, 98, 102
	s. 4	98
	s. 5	99
	s. 6	98
	s. 9	98

		PAGE
31 & 32 Vict. c. 118.	(Public Schools Act, 1868)—	
	s. 10	98
	s. 11	98
	s. 12	98
	s. 13	98
	s. 14	98
	s. 20	99
	s. 20 (16)	99
	s. 22	98
	s. 23	98
	s. 26	99
	s. 29	99
	s. 31	98
	s. 32	99
c. 122.	(Poor Law Amendment Act, 1868)—	
	s. 11	87
	s. 16	89
	s. 17	89
	s. 18	90
	s. 19	90
	s. 20	90
	s. 22	90
	s. 23	84
	s. 42	83
c. 125.	(Parliamentary Elections Act, 1868)...415, 422, 431, 441, 505	
	s. 2	430, 431, 441
	s. 3	411, 478
	s. 4	408
	s. 5	411, 412
	s. 6 (1)	412
	(2)	412, 413
	(3)	412
	(4)	419
	(b)	416, 418
	(5)	419
	s. 7	412
	s. 8	418, 420, 421
	s. 9	421
	s. 10	437
	s. 11	408, 447
	(1)	408
	(4)	408
	(6)	408
	(10)	439
	(11)	438
	(12)	439
	(13)	460
	(14)	461
	(a)	461
	(b)	461
	(c)	461
	(15)	461
	(16)	436, 437
	s. 12	459
	s. 13	138, 463
	s. 14	461, 463
	s. 15	461, 463, 466
	s. 17	287, 446
	s. 18	436
	s. 19	436
	s. 22	416, 417, 437
	s. 23	437
	s. 24	411, 431, 440
	s. 25	409, 430, 445
	s. 26	136, 269, 281, 307, 409, 441, 445
	s. 27	410, 478
	s. 28	411
	s. 29	410, 411, 511
	s. 30	411

		PAGE
31 & 32 Vict. c. 125.	(Parliamentary Elections Act, 1868)—	
	s. 31	440, 531
	s. 32	440, 441
	s. 34	478, 479
	s. 35	431, 432, 433, 434, 435
	s. 37	435
	s. 38	416, 431
	s. 39	417
	s. 41	472, 477, 478, 480, 520
	s. 42	480
	s. 48	463
	s. 49	414
	s. 51	417, 418
	s. 52	411
	s. 53	427, 453
	s. 56	444, 464
32 & 33 Vict. c. 18.	(Lands Clauses Consolidation Act, 1869)	549
c. 21.	(Corrupt Practices Commission Expenses Act, 1869)—	
	s. 2	481
	s. 3 (1)	481
	(2)	481
	(3)	481
	(4)	481
	(5)	482
c. 41.	(Poor Rate Assessment and Collection Act, 1869) —	
	s. 7	170
	s. 10	197
	s. 16	171
	s. 19	170, 171, 187
c. 55.	(Municipal Corporations (Election) Act, 1869), s. 9	183
c. 56.	(Endowed Schools Act, 1869)	5, 99, 102, 106, 108, 116
	s. 4	101
	s. 5	101
	s. 6	102
	s. 7	102
	s. 8	103, 106
	(3)	115
	(4)	103
	(5)	103
	(6)	103
	(7)	103
	s. 9	100
	s. 10	100
	s. 11	104, 106
	s. 12	105
	s. 13	106
	s. 14	102, 104
	s. 15	107, 113
	s. 16	107
	s. 17	108
	s. 18	108
	s. 19	108
	(2)	110
	s. 20	106
	s. 21	106
	s. 22	106
	s. 23	100
	s. 24	104
	(2)	110
	(4)	110
	s. 25	105, 110
	s. 26	105, 110
	s. 27	104
	s. 28	101
	s. 30	116
	s. 31	99
	s. 32	109
	s. 33	109
	s. 34	109

		PAGE
32 & 33 Vict. c. 56.	(Endowed School Act, 1869)—	
	s. 35	109
	s. 36	109
	s. 37	109
	s. 38	104
	s. 39	110
	s. 40	110
	s. 41	111
	s. 42	110
	s. 44	101
	s. 45	100, 109, 110
	s. 46	110
	s. 49	101
	s. 50	109
	s. 53	106
	s. 54	102
	s. 55	100, 101
	s. 56	109
	s. 57	109
	s. 59	99
c. 53.	(Public Schools Act, 1869)	97
	s. 2	98
	s. 3	99
c. 63.	(Metropolitan Poor Amendment Act, 1869)—	
	s. 1	85
	s. 2	86
	s. 7	86
	s. 11	89
	s. 21	89
c. 73.	(Telegraph Act, 1869)	572, 584
	s. 3	549
c. 110.	(Charitable Trusts Act, 1869)	24, 106
33 & 34 Vict. c. 2.	(Dissolved Boards of Management and Guardians Act, 1870)	85
c. 14.	(Naturalization Act, 1870), s. 12 (2)	458
c. 18.	(Metropolitan Poor Amendment Act, 1870), s. 2	89
c. 23.	(Forfeiture Act, 1870), s. 2	141
c. 75.	(Elementary Education Act, 1870)	6, 12, 15, 27, 39, 70, 79, 81, 102, 112
	s. 3	12, 15, 28, 29, 33, 37, 49, 55
	s. 7	29, 30
	(1)	29, 30
	(2)	30
	(3)	30
	(4)	10, 30
	s. 14	29
	(1)	33
	(2)	34
	s. 16	14
	s. 17	31
	s. 18	25, 29
	s. 19	26
	s. 20	26
	(2) (a)	27
	(b)	27
	(3)	27
	(4)	27
	(5)	27
	(6)	28
	(7)	28
	(8)	28
	s. 21	40
	s. 22	21
	s. 23	24, 28
	s. 24	29
	s. 35	20, 46
	s. 52	46
	s. 63	12

		PAGE
33 & 34 Vict. c. 75.	(Elementary Education Act, 1870)—	
	s. 64	12
	s. 65	12
	s. 66	12
	s. 67	14
	s. 68	14
	s. 69	14
	s. 70	14
	s. 71	14
	s. 72	14, 70
	s. 73	14
	s. 74	55, 58, 59, 60, 61
	s. 75	103, 112, 115
	s. 76	39
	s. 78	13
	s. 81	8, 22
	s. 82	22
	s. 83	8, 22
	s. 84	8, 22
	s. 85	21
	s. 86	121
	s. 92	60
	s. 95	14
	s. 96	11
	s. 97	10, 11
	s. 98	26
	s. 99	39
	s. 100	14
c. 78.	(Tramways Act, 1870)—	
	s. 28	571
	s. 30	583
	s. 32	583, 584
	s. 43	600, 602
	s. 55	565
c. 88.	(Telegraph Act, 1870)	572, 584
34 & 35 Vict. c. 26.	(Universities Tests Act, 1871)—	
	s. 3	94
	s. 4	94
	s. 5	94
	s. 6	94
	s. 7	94
c. 41.	(Gasworks Clauses Act, 1871)	550, 610, 613
	s. 1	608
	s. 4	573
	s. 38	573, 614
	s. 39	573, 598, 599
	s. 40	573, 599
	s. 41	573, 599
	s. 42	573, 611
	s. 45	573, 608
	s. 46	573, 611
c. 60.	(Public Schools Act, 1871)	97
c. 61.	(Election Commissioners Expenses Act, 1871)—	
	s. 3	481, 482
	s. 4 (1), (2)	483
	s. 5	481
c. 63.	(College Charter Act, 1871), s. 2	92
35 & 36 Vict. c. 21.	(Reformatory and Industrial Schools Acts Amendment Act, 1872)	71
c. 33.	(Ballot Act, 1872)	258, 261, 262, 299, 306, 312, 314, 322, 323, 342, 349, 350, 368, 389, 395
	s. 1	265, 273, 274, 275, 276, 305, 307
	s. 2	145, 312, 313, 317, 320, 327, 328, 331, 458
	s. 3	531
	s. 4	318, 535
	s. 5	308
	s. 6	304, 310, 358, 368
	s. 7	139, 233, 313, 314, 315, 455

PAGE

35 & 36 Vict. c. 33. (Ballot Act, 1872)—
s. 8 258, 273, 311, 316
s. 9 321, 455, 534
s. 10 322
s. 11 374, 463, 476, 538
s. 12 319, 449, 452
s. 13 261, 322
s. 15 321, 526, 527
s. 20 350, 351
s. 21 350
s. 24 292, 526, 527
s. 25 145, 456, 457
s. 28 261, 262
s. 31 262, 278, 312, 323, 325, 328
Sched. I. . 261, 262, 273, 274, 275, 276, 305, 307, 309, 310, 311, 315, 316, 317, 318, 320, 321, 322, 326, 327, 328, 329, 330, 331, 332, 340, 351, 414, 428, 429, 450, 452, 454, 456, 457, 458, 511, 517, 526
Sched. II. 258, 261, 315
Sched. IV. 455
c. 60. (Corrupt Practices (Municipal Elections) Act, 1872) . 486
s. 13 (4) 418
s. 14 (5) 488
c. 62. (Education (Scotland) Act, 1872) 33
s. 70 60
36 & 37 Vict. c. 41. (Public School (Harrow) Act, 1873) 97
s. 2 99
s. 5 99
c. 62. (Public School (Eton) Act, 1873) 97
s. 2 98
s. 3 98
s. 4 98
c. 66. (Judicature Act, 1873)—
s. 2 464
s. 8 138
s. 16 332, 411, 431, 436, 464
s. 25 (8) 540
s. 32 408, 411, 431, 436
s. 87 410
s. 100 429
c. 70. (Revising Barristers Act, 1873)—
s. 3 217
s. 4 220, 221
s. 5 221
c. 86. (Elementary Education Act, 1873) 6, 12, 15, 39, 79, 81
s. 13 21
s. 15 27
s. 19 14
s. 20 22, 27
s. 22 66
s. 23 60
s. 24 (3) 65
(4) 66
(5) 66
(6) 66
(7) 66
(8) 66
(9) 65
c. 87. (Endowed Schools Act, 1873) . 5, 99, 102, 106, 112, 116
s. 3 103, 112, 115
s. 4 102
s. 5 105
s. 6 108
s. 7 108
s. 8 107, 110
s. 11 107
s. 12 109
s. 13 109, 111

		PAGE
36 & 37 Vict. c. 87.	(Endowed Schools Act, 1873)—	
	s. 14	110
	s. 15	109, 111
	s. 16	101
	s. 17	100
	s. 18	106
37 & 38 Vict. c. 40.	(Board of Trade Arbitrations etc. Act, 1874)—	
	s. 2	609
	s. 3	610
	s. 4	610
	s. 6	615
	s. 7	615
c. 53.	(Revising Barristers Act, 1874), s. 1	219
c. 81.	(Great Seal (Offices) Act, 1874), s. 5	257
c. 87.	(Endowed Schools Act, 1874)	5, 99, 102, 106, 116
	s. 1	100
	s. 6	100, 101, 116
c. 88.	(Births and Deaths Registration Act, 1874)	66
	s. 28	239
38 & 39 Vict. c. 29.	(Endowed Schools Act, 1875)	102
c. 40.	(Municipal Elections Act, 1875)	344
	s. 1 (3)	343
c. 55.	(Public Health Act, 1875)	554
	s. 2	585
	s. 4	549
	s. 5	548
	s. 6	548
	s. 9	548
	s. 67	94, 95
	s. 150	643
	s. 161	642
	s. 190	377
	s. 199	375
	ss. 207, 208	553
	ss. 229, 230	553
	s. 233	553, 554
	s. 234	553, 554
	(2), (3)	51
	ss. 236—239	553, 554
	ss. 246, 247	84
	s. 265	607
	s. 308	643
	s. 334	585
	Sched. I.	375, 376
c. 66.	(Statute Law Revision Act, 1875)	85, 87, 613
	s. 1	611
	Sched.	611
c. 77.	(Judicature Act, 1875)—	
	s. 17	409
	s. 23	218
c. 83.	(Local Loans Act, 1875)	554
c. 84.	(Parliamentary Elections (Returning Officers) Act, 1875)	311
	s. 2	277
	s. 3	277
	s. 4	334
	s. 5	335
	s. 6	335
	s. 7	305
	s. 8	278, 335
	Sched. I.	334, 338
	Sched. II.	305
	Sched. III.	277
39 & 40 Vict. c. 41.	(Medical Act, 1876)	91
c. 59.	(Appellate Jurisdiction Act, 1876), s. 17	409
c. 79.	(Elementary Education Act, 1876)	6, 12, 15, 39, 58, 79, 80, 81
	s. 4	55
	s. 5	56, 62, 63

		PAGE
39 & 40 Vict. c. 79.	(Elementary Education Act, 1876)—	
	s. 6	64
	s. 7	64
	s. 9	64
	s. 10	84
	s. 11	56, 57, 63
	s. 12	57, 58
	s. 13	56, 58
	s. 16	79
	s. 19 (2)	50
	s. 20	11
	s. 23	56, 59
	s. 24	62, 63
	s. 25	66
	s. 26	66
	s. 28	56, 59, 64
	s. 29	65
	s. 33	47
	s. 37	65, 66
	s. 38	65
	s. 39	64, 65
	s. 40	83
	s. 45	8, 22
	s. 47	63
	s. 48	55, 57
	s. 50	54, 61, 66
	Sched. I.	62
40 & 41 Vict. c. 25.	(Solicitors Act, 1877)—	
	s. 6	91
	s. 10	91
c. 60.	(Canal Boats Act, 1877)—	
	s. 6	67
	s. 7	67
	s. 12	67
41 & 42 Vict. c. 3.	(House Occupiers Disqualification Removal Act, 1878),	
	s. 2	165
c. 26.	(Parliamentary and Municipal Registration Act, 1878)	199, 236, 243
	s. 4	194
	s. 5	160, 163, 166, 173, 174, 175, 176
	s. 6 (1)	176
	(2)	176
	(3)	176
	s. 7	142, 158, 163, 174, 175, 179, 180, 181, 206, 209, 229
	s. 9	193
	s. 10	197, 198
	s. 11	198, 239
	s 12	199
	s. 14	170, 171, 187
	s. 15	193, 203
	(7)	203
	(8)	204
	s 16	193
	s. 18	210
	s. 21	193, 204, 242
	s. 22	204, 208, 209
	s. 23	229
	s. 24	209, 224, 225, 226
	s. 26	213, 214, 230, 238
	s. 27	193
	(1)	216
	(2)	216
	(3)	293
	s. 28	193, 223, 224, 229
	(1)	223, 225
	(2)	227, 228, 230
	(3)	232
	(4)	232

		PAGE
41 & 42 Vict. c. 26.	(Parliamentary and Municipal Registration Act, 1878)—	
	s. 28 (5)	233
	(6)	233
	(7)	139, 233
	(8)	234
	(9)	234
	(10)	231, 234
	(11)	232
	(12)	223, 225, 226
	(13)	223, 224, 225, 226, 227
	(14)	152, 234, 235, 236
	(15)	237
	s. 29	193
	s. 30	240, 247
	(1)	240
	(2)	241
	s. 31	238, 246
	s. 32	244
	s. 35	256, 257
	s. 36	222
	s. 37	254, 255
	s. 38	250, 255
	s. 40	214, 215, 216
c. 32.	(Building Acts Amendment Act, 1878), s. 12	644
c. 76.	(Telegraph Act, 1878)	572, 584, 641
	s. 2	551, 572
	ss. 7—12	572
42 & 43 Vict. c. 6.	(District Auditors Act, 1879)	88
c. 48.	(Elementary Education (Industrial Schools) Act, 1879)	12, 15, 39, 79, 81
c. 59.	(Civil Procedure Acts Repeal Act, 1879), s. 3	141
c. 75.	(Parliamentary Elections and Corrupt Practices Act, 1879)	440, 445
	s. 2	408, 431, 433, 460, 461
c. ccxiii.	(Liverpool Corporation Electric Lighting Act, 1879)	543
43 & 44 Vict. c. 23.	(Elementary Education Act, 1880)	6, 12, 15, 39, 79, 81
	s. 2	13, 58
	s. 4	56, 58, 62, 66, 69
	s. 5	83
c. 46.	(Universities and College Estates Amendment Act, 1880), s. 5	93, 98
c. cxxv.	(Hull Corporation Electric Lighting Act, 1880)	543
44 & 45 Vict. c. 40.	(Universities Elections Amendment (Scotland) Act, 1881)—	
	s. 2	286
	(1)	326
c. 42.	(Corrupt Practices (Suspension of Elections) Act, 1881)	471
c. 68.	(Judicature Act, 1881)—	
	s. 13	408, 439, 445
	s. 14	256, 436, 437, 445, 459, 460, 512
	s. 19	409
	s. 25	410, 422
c. clii.	(Birkenhead Corporation Gas and Water Act, 1881), s. 2	574
45 & 46 Vict. c. 9.	(Documentary Evidence Act, 1882)	8
c. 38.	(Settled Land Act, 1882)	93
c. 49.	(Militia Act, 1882), s. 40	258
c. 50.	(Municipal Corporations Act, 1882)	52, 79, 260, 342, 354, 389, 394, 412, 487, 491, 500, 502, 504, 506
	s. 2	345
	s. 5	486
	s. 6	190
	s. 7	142, 260
	(1)	194, 486
	s. 9	189, 190, 486
	(1)	182
	(2) (b)	184
	(c)	187
	(d)	187

		PAGE
45 & 46 Vict. c. 50.	(Municipal Corporations Act, 1882)—	
	s. 9 (2) (e)	187
	(3)	182
	(a)	183
	(b)	183
	(c)	184
	s. 11	486
	(2)	354
	(3)	184, 354
	(4)	354
	s. 12	486, 491
	(1) (c)	339
	s. 13 (2)	340
	(3)	340
	s. 14	339
	(1)	354
	(2)	354
	(3)	354
	(4)	354
	(5)	354
	(6)	354
	(7)	354
	s. 15	339, 352
	(1)	353
	(3)	353, 359
	s. 16	360
	s. 22 (1)	352, 353
	(3)	353
	ss. 25, 27	554
	s. 31	185
	(a)	184
	(b)	184
	s. 32	187
	(2)	522
	s. 33 (1)	188
	(2)	188
	(3)	188
	(4)	142, 183
	s. 37	359
	s. 38	340
	s. 40	500
	(1)	340, 357
	s. 41	486
	s. 45	246
	(1)	237, 245
	(2)	241, 246
	(3)	245
	(4)	245
	(5)	245
	(8)	245
	s. 46 (1)	246
	(2)	246
	s. 48	246
	(1)	245
	s. 49	205
	s. 50 (1)	339
	(2)	339
	s. 51 (1)	342
	(2)	342, 359
	(3)	342
	s. 52	339
	s. 53 (1)	340
	(2)	340
	s. 54	340
	s. 59	530
	(3)	532
	s. 60 (1)	354
	(2)	354, 361
	(3)	354

		PAGE
45 & 46 Vict. c. 50.	(Municipal Corporations Act, 1882)—	
	s. 60 (4)	354
	(5)	355
	(6)	355
	(7)	355
	s. 61	352, 359
	(1)	352
	(2)	352
	(3)	353
	(4)	353
	s. 62 (1)	356
	(4)	356
	(5)	356
	(6)	356
	s. 63	183, 248
	s. 66	340
	(1)	339, 352
	(2)	352
	s. 67	343
	(1)	340
	(2)	340
	s. 70 (1)	339
	s. 71 (1)	245
	(2)	246
	s. 74	532
	(1)	532
	(2)	532
	s. 75	374
	(1)	539
	(2)	540
	(3)	540
	s. 77	339, 492
	s. 81	345
	s. 87 (1) (a)	387, 491
	(b)	387
	(c)	387, 492
	(d)	387
	(2)	388, 492
	s. 88	411
	(1)	492
	(2)	496
	(3)	493
	(4)	493
	s. 89 (1)	494
	(2)	494, 495
	(3)	498
	(4)	498
	(5)	498
	(6)	498
	(7)	498, 499
	s. 90	498, 499
	s. 91 (1)	487, 499
	(2)	512
	(3)	512
	(4)	513
	s. 92	138
	(1)	486, 487
	(2)	487
	(3)	487
	(4)	487, 506
	(5)	488
	(6)	511, 515, 537
	s. 93 (1)	513
	(2)	515, 516
	(3)	488
	(4)	518
	(5) (a)	488, 518
	(b)	518
	(c)	518

		PAGE
45 & 46 Vict. c. 50.	(Municipal Corporations Act, 1882)—	
	s. 93 (6)	519
	(7)	512
	(8)	489, 517
	(10)	507, 516
	s. 94 (1)	514
	(2)	513, 514
	(3)	513, 514
	(4)	514
	(5)	514
	(9)	520, 523
	s. 95 (1)	509
	(2)	509
	(3)	509
	(4)	510
	(5)	510
	(6)	510
	(7)	510
	(8)	509
	s. 96 (1)	508
	(2)	508
	(3)	508
	(4)	508
	s. 97 (1)	496, 497
	(2)	497
	s. 98 (1)	520
	(2)	521
	(3)	522
	s. 99 (1)	489
	(2)	489
	(3)	489
	(4)	490, 514
	s. 100 (1)	492
	(2)	492
	(3)	492, 516, 517
	(4)	506, 511
	(5)	493
	s. 101 (1)	491
	(2)	523
	(3)	523
	s. 102	353
	s. 104	517
	s. 139	540
	s. 140	350
	s. 163 (6)	219
	s. 203	179
	s. 205	189
	s. 209 (1)	189
	s. 224 (5)	540
	s. 230	340
	(1)	352, 504
	(2)	504
	(3)	504
	s. 231	187
	s. 232	340
	s. 233 (5)	179
	s. 238	194
	s. 242	554
	(3)	512
	s. 244 (1)	260
	(2)	260
	(3)	260
	s. 257	94, 95
	(3)	188, 189
	s. 260 (2)	486
	Sched. I.	486
	Sched. II.	352, 353
	Sched. III.	340, 341, 342, 343, 344, 345

		PAGE
45 & 46 Vict. c. 56.	(Electric Lighting Act, 1882) .	542, 564, 565, 569, 575, 616, 619, 623
	s. 2	543, 549, 625
	s. 3	543, 544
	(3)	547, 567, 631, 642
	(4)	547, 567, 631
	(5)	559
	(6)	559
	(7)	556
	(8)	556
	(9)	556
	s. 4 (2)	559
	(3)	560
	(4)	547
	s. 5	544, 551, 559, 571
	s. 6	544, 545, 546, 556
	s. 7	552, 553, 623
	s. 8	553, 554, 623
	s. 9	604, 605
	s. 10	561, 563, 564, 568, 588, 629, 634
	s. 11	562
	s. 12	564, 568, 573, 574, 599, 608, 610, 611, 613, 614, 629
	s. 13	571, 576, 586, 630
	s. 14	571, 630
	s. 15	580, 583
	s. 16	582
	s. 17	561, 585
	s. 18	590
	s. 19	589, 593, 633
	s. 20	589, 633
	s. 21	598
	s. 22	543, 612
	s. 23	543, 614
	s. 24	614
	s. 25	614, 615
	s. 26	572
	s. 27	600
	s. 28	609, 610, 615
	s. 29	645
	s. 30	645
	s. 31	548, 550, 552, 553
	s. 32	548, 549, 641
	s. 33	585, 612
	s. 34	612
	s. 35	612
	Sched.	548, 552, 553, 554
c. 58.	(Divided Parishes and Poor Law Amendment Act, 1882), s. 13	84
c. 68.	(Corrupt Practices (Suspension of Elections) Act, 1882)	471
46 & 47 Vict. c. 15.	(Lands Clauses (Umpire) Act, 1883)	549
c. 37.	(Public Health Act, 1875 (Support of Sewers) Amendment Act. 1883)	585
c. 39.	(Statute Law Revision Act, 1883).	92, 98
c. 51.	(Corrupt and Illegal Practices Prevention Act, 1883) .	196, 263, 281, 293, 308, 422, 423, 444, 505
	s. 1	451, 472
	(1)	290
	(2)	290
	s. 2	292, 349
	s. 3	281, 282, 283, 284, 285, 286, 289, 291, 292
	s. 4	279, 281, 286, 484
	s. 5	279, 398, 462, 483
	s. 6	141, 279, 281, 398
	(1)	529
	(2)	525, 528
	(3)	528, 529
	(4)	528, 529

PAGE

46 & 47 Vict. c. 51. (Corrupt and Illegal Practices Prevention Act, 1883)—
s. 7 268, 288, 303, 345
(1) (a) 294
(b) 294
(c) 294, 295
(2) 294, 295
(3) 294
s. 8 295
(1) 264
s. 9 (1) 296, 347
(2) 296, 347
(3) 296
s. 10 141, 279, 398, 530, 533
s. 11 279, 281, 461, 462
(a) 280, 484
(b) 484
s. 12 138, 463, 464, 466
s. 13 300, 301, 302, 303
s. 14 288, 348
(1) 303
(2) 303
(3) 304
(4) 304
s. 15 301, 347
s. 16 301, 347
(2) 302
s. 17 302, 348
(2) 303
s. 18 296, 297, 348
s. 19 304, 348, 407
s. 20 304, 349, 407
s. 21 301, 534
(1) 407, 534
(2) 300, 301, 302, 303, 304, 534
(6) 407
s. 22 286, 289, 291, 398, 399, 483, 484
s. 23 301, 398, 404, 476, 484
s. 24 (1) 267
(2) 267
(3) 267
(4) 267
s. 25 267
(1) 267
(2) 267
(3) 267
(4) 267
s. 26 (1) 268
(2) 268
s. 27 (1) 300, 301
(2) 301
s. 28 269, 271, 295, 297
s. 29 404
(4) 298
(5) 298
(6) 298, 398, 404, 484
(9) 398, 405
(10) 405
s. 33 298, 529
(1) 336, 414
(2) 336
(3) 336
(4) 336
(5) 337
(7) 293, 345
(8) 337
(9) 337
s. 34 298, 476, 532
(1) 398, 406

		PAGE
46 & 47 Vict. c. 51.	(Corrupt and Illegal Practices Prevention Act, 1883)—	
	s. 34 (2)	406
	(3)	407
	(4)	407
	s. 35 (1)	338
	(2)	335, 338
	s. 36	283
	s. 37	141, 407, 408
	s. 38 (1)	462, 469, 519
	(2)	470
	(3)	470
	(5)	471, 484
	(6)	471, 485, 525
	(7)	471, 485, 525
	(8)	525
	(b)	471, 485
	(9)	471
	s. 39	141
	(1)	196
	(3)	196, 217
	(4)	209, 216
	(5)	232
	(6)	232
	(7)	232
	(8)	242
	s. 40 (1)	413
	(a)	413
	(b)	413
	(2)	413
	(3)	413, 414
	(4) (a)	414
	(b)	414
	s. 41 (1)	432
	(2)	432
	(3)	432
	(4)	434, 530
	(5)	433, 434
	(6)	435
	(7)	435
	(8)	433
	(9)	433
	s. 42	439
	s. 43	526, 532, 535
	(1)	442, 443
	(2)	442
	(3)	515, 528
	(4)	536
	(5)	536
	(6) (b)	536
	(c)	537
	(7)	442
	(8)	475
	s. 44	526, 532
	(1)	475
	(2)	475
	(3)	477
	s. 45	505, 526, 532
	s. 46	471, 486, 505, 525
	s. 47	308, 309
	(1)	309
	(2)	308, 309
	(3) (a)	309
	(5)	309
	(7)	308
	s. 48	294, 295
	s. 49	451, 466
	s. 50	505
	s. 51	457, 505, 528, 529

PAGE

46 & 47 Vict. c. 51. (Corrupt and Illegal Practices Prevention Act, 1883)—
s. 51 (1) 528
(2) 528
s. 52 505, 530
s. 53 285
(1) 529
(3) 533, 534
ss. 54, 55 505
s. 56 409, 410, 505, 506
(1) 413
(2) 409, 445
s. 57 505
s. 58 (1) 483
s. 59 451, 505, 514
(1) 450, 467
(a) 450, 467
(b) 451
(2) 451
(3) 451
(4) 451, 467
(5) 468
s. 60 462, 469, 505, 518, 519
s. 61 (2) 538
s. 62 (2) 430
s. 63 264, 458
(1) 265
(2) (a) 265
(b) 265
s. 64 196, 281, 284, 290, 292, 294, 295, 298, 300, 301, 335, 411
s. 65 (1) 451
s. 68 (1) 264
Sched. I. 267, 268, 269, 287, 295, 296, 302, 336, 407, 408
Sched. II. 265, 335, 336, 338
Sched. III. 264, 294, 451
Sched. V. 539

47 & 48 Vict. c. 18. (Settled Land Act, 1884) 93
c. 43. (Summary Jurisdiction Act, 1884), s. 4 611
c. 61. (Judicature Act, 1884), s. 16 440
c. 70. (Municipal Elections (Corrupt and Illegal Practices) Act, 1884) 196, 493, 502, 505, 520
s. 2 529
(2) 524
s. 3 345
(1) 524
(2) 518, 524
s. 4 345
(1) (a) 346
(b) 346
(c) 346
(2) 346
(3) 346
s. 5 345
(1) 346, 353, 355, 356, 360, 361
(2) 346, 353, 355, 356, 360, 361
(3) 346
(4) 347
s. 6 (1) 347
(2) 347
(3) 347
s. 7 534
(1) 492
s. 8 (1) 488, 491, 518
(2) 353, 355, 356, 360, 361, 518, 525
s. 9 347
s. 10 348
s. 11 347
s. 12 347

		PAGE
47 & 48 Vict. c. 70.	(Municipal Elections (Corrupt and Illegal Practices) Act. 1884)—	
	s. 13	341, 348
	(1)	341
	(3)	341
	s. 14	348
	s. 15	348
	s. 16	400
	(1)	349
	(2)	349
	s. 17	534
	(1)	534
	(2)	347, 348, 534
	s. 18	400, 488, 491, 492, 519, 524
	s. 19	524, 525
	s. 20	400, 506, 508, 522, 525
	s. 21	406, 522
	(1)	341, 349
	(3)	351
	(4)	351
	(5)	345, 349
	(6)	506
	(7)	408, 525
	(10)	352
	(11)	352
	s. 23	141, 486, 519, 525
	s. 24	196, 217
	s. 25	388
	(1)	355, 494
	(2)	494
	(3	494
	(4	494
	s. 26 (1)	510
	(2)	510
	(3)	510
	(4)	510
	(6)	510
	(7)	509, 511
	s. 27	515
	s. 28	514
	(3)	515
	(7)	515
	(8)	515
	(9)	521
	s. 29 (1)	522
	(2)	523
	(3)	521
	s. 30	505, 506, 514, 518, 519, 525, 529
	(b)	492
	(c)	514
	s. 31	519
	s. 32 (1)	523
	s. 34	339
	s. 35	138, 394, 486, 499, 500
	(1)	500
	(3)	395
	(5)	395
	(6)	395
	(7)	395
	s. 36 (1)	503
	(e)	516
	(2)	138, 487, 488, 506
	s. 37	368
	Sched. I	503
	Sched. II	506
	Sched. III	486, 519, 525
c. 75.	(Canal Boats Act, 1884) —	
	s. 2	67

PAGE

47 & 48 Vict. c. 75. (Canal Boats Act, 1884)—
s. 5 67
s. 6 67
48 & 49 Vict. c. 3. (Representation of the People Act, 1884) . . . 247
s. 2 163, 170, 175, 207, 208
s. 3 165, 168, 172, 189
s. 4 (1) 147
(2) 152
s. 5 . . . 156, 157, 158, 159, 160, 161, 162, 165
s. 6 156
s. 7 (6) 156
s. 9 (2) 196
(3) 197
(4) 197
(8) 174
(9) 171
s. 10 148, 156
s. 11 . . . 147, 156, 157, 158, 159, 160, 162, 194
s. 12 157, 160, 162
Sched. II. 161
c. 9. (Municipal Voters Relief Act, 1885), s. 2 187
c. 10. (Elections (Hours of Poll) Act, 1885) 359
s. 1 313
s. 2 313
c. 15. (Registration Act, 1885) 207, 227, 236, 247
s. 1 . . . 197, 198, 199, 203, 204, 207, 209, 216, 217, 222, 230, 231, 233, 234, 237
(1) 193, 200, 206, 207, 216, 239
(2) 193, 216, 226, 239
(3) 193, 216
(f) 216
s. 2 (1) 209
(2) 209
s. 3 160, 207
(1) 206, 207, 208, 210
(2) 217
s. 4 (1) 219
(2) 206
(3) 220
(4) 220
(5) 228, 241
(6) 220, 237, 241
(7) 241
(8) 243
(9) 234
(a) 234
(b) 236
(c) 236
s. 5 236, 455
(1) (a) 160
(2) 236
s. 6 (2) 193, 240, 247
(c) 217
s. 7 195
(2) 195
(3) 195
s. 8 247
s. 9 (2) 200
s. 11 156
s. 12 139, 146, 154, 156, 161, 163, 175
s. 15 455
s. 16 199
s. 18 162
s. 19 194
c. 17. (Parliamentary Registration (Ireland) Act, 1885), s. 20 213
c. 23. (Redistribution of Seats Act, 1885) 260
s. 2 179, 260, 309
s. 8 (3) 455

		PAGE
48 & 49 Vict. c. 23.	(Redistribution of Seats Act, 1885)—	
	s. 9 (3)	209, 438
	s. 10	159, 165
	s. 12 (4)	247
	(5)	260
	s. 13	259
	s. 14 (2) (b)	237
	s. 15	457
	s. 16 (1)	262
	(2)	262
	Sched. I.	179, 309
c. 46.	(Medical Relief Disqualification Removal Act, 1885)—	
	s. 2	183, 192
	(a)	142
c. 56.	(Parliamentary Elections (Corrupt Practices) Act, 1885)—	
	s. 1	289
	s. 2	289
c. 58.	(Telegraph Act, 1885)	572, 584
c. 62.	(Parliamentary Elections (Returning Officers) Act, 1885)	311
	s. 2	277
49 & 50 Vict. c. 31.	(Oxford University Justices Act, 1886)	94
c. 42.	(Revising Barristers Act, 1886)—	
	s. 1 (1)	218
	(2)	218
	(3)	218
	s. 2	219
	(4)	218
c. 48.	(Medical Act, 1886)	91
50 Vict., sess. 2, c. xiii.	(City of London Ballot Act, 1887)	394
	s. 2	500
	s. 5	394
	s. 6	395
	s. 7 (3)	532
	s. 8	535
	s. 9	499, 500
	s. 11	395
	Sched.	500, 511
50 & 51 Vict. c. 9.	(Police Disabilities Removal Act, 1887)—	
	s. 2 (1)	311
	(2)	311
	(3)	311
	(4) (a)	311
	(b)	311
c. 30.	(Settled Land Acts (Amendment) Act, 1887)	93
c. 49.	(Charitable Trusts Act, 1887)	106
c. 55.	(Sheriffs Act, 1887)—	
	s. 18	262
	s. 25	258
	s. 36 (1)	260
51 & 52 Vict. c. 10.	(County Electors Act, 1888)	191
	s. 2	142
	(1)	238
	(2)	248, 499
	s. 3	189
	s. 4	193, 196, 197, 200, 203, 204, 216, 217, 223, 230, 239, 240, 247, 256
	(1)	198, 210
	(a)	217
	(2) (b)	194
	(d)	200
	(3)	242
	s. 5	204, 242
	s. 6	206
	(1)	206, 220, 221
	s. 7 (1)	245
	(2)	237, 245, 246, 499
	(5)	249
	(6)	246

		PAGE
51 & 52 Vict. c. 10.	(County Electors Act, 1888)—	
	s. 7 (10)	234
	s. 8	239, 247
	s. 9	218, 219
	s. 10 (3)	219
	s. 12	205
	s. 14	195
	(a)	195
	(b)	195
	Sched.	189
c. 12.	(Electric Lighting Act, 1888)	546, 549, 552, 556, 560, 604, 633, 638
	s. 1	558, 559
	s. 2	563, 600, 601, 616, 619, 624, 625, 626, 628, 637
	s. 3	601, 616, 626, 628, 637
	s. 4	543, 640
	(1)	640
	(2)	641
	(3)	641
	(4)	640
	(5)	641
	(6)	640, 641
	s. 5	542, 547
c. 41.	(Local Government Act, 1888)	71, 79, 118, 493
	s. 1	359
	s. 2 (1)	356, 361
	(2) (a)	361
	(b)	361
	(c)	361
	(d)	356
	(e)	356, 358, 359
	(4)	191
	(5) (a)	360, 499
	(6)	360
	s. 3 (4)	190
	(12)	247, 262, 308
	s. 23	49
	s. 24 (2)	88
	s. 26	88
	s. 34	88
	s. 40	53, 548, 553
	s. 51 (1)	358
	(2)	358
	(3)	358
	s. 54	246
	s. 62	85
	s. 68	553
	s. 69	50, 51
	s. 71	52, 554
	s. 71 (3)	492
	s. 75	359, 360, 361, 491, 500, 504
	(2)	357
	(3)	357
	(4)	357
	(5)	357
	(7)	358
	(8)	359
	(10)	360
	(11)	359
	(13)	360, 361
	(16)	360
	(b)	360
	(c)	360, 361
	(g)	358
	s. 76 (4)	218
	(7)	195

		PAGE
51 & 52 Vict. c. 41.	(Local Government Act, 1888)—	
	s. 77	205
	s. 83 (6)	195
	s. 88 (a)	397
	(b)	397
	s. 100	194, 358, 397
	s. 120	16
c. 42.	(Mortmain and Charitable Uses Act, 1888)	98
	s. 1	117
	s. 4 (7)	118
	s. 7 (1)	92, 98
	s. 8	118
c. 45.	(Victoria University Act, 1888)	91
c. 46.	(Oaths Act, 1888)—	
	s. 1	468
	s. 2	319
c. 65.	(Solicitors Act, 1888), s. 5	410
52 & 53 Vict. c. 30.	(Board of Agriculture Act, 1889)—	
	s. 2 (2)	15
	s. 4	15
c. 34.	(Telegraph (Isle of Man) Act, 1889)	572, 584
c. 36.	(Settled Land Act, 1889)	93
c. 40.	(Welsh Intermediate Education Act, 1889)	5, 15, 20, 22, 99, 102, 106, 111, 112, 113, 114, 116
	s. 1	99, 111
	s. 2	111
	s. 3 (1)	113
	(2)	112
	(3)	114
	(5)	112
	(6)	114
	s. 4 (1)	112
	(3)	113
	s. 5	113
	s. 6	113
	s. 7	112
	(4)	112
	s. 8	112
	(2)	112
	(3)	112
	(4)	112
	s. 9	48, 113
	s. 11	114
	s. 12	112
	(1)	114
	s. 13	112, 114
	s. 16	112
	(2)	112
	s. 17	111
c. 56.	(Poor Law Act, 1889)—	
	s. 1 (6)	89
	s. 2 (5)	88
c. 63.	(Interpretation Act, 1889)	590
	s. 1 (a)	140
	s. 3	159
	s. 12 (6)	9
	s. 17 (2)	139
c. 69.	(Public Bodies (Corrupt Practices) Act, 1889)—	
	s. 2	196
	(d)	142
c. cxcvi.	(Metropolitan Electric Lighting Act, 1889)	618
53 & 54 Vict. c. 8.	(Customs and Inland Revenue Act, 1890), s. 7	49
c. 22.	(Education Code Act, 1890)	6, 12, 15, 39, 79, 81
	s. 2	50
c. 33.	(Statute Law Revision Act, 1890)	178
c. 59.	(Public Health Acts Amendment Act, 1890)—	
	s. 13	641

		PAGE
53 & 54 Vict. c. 59.	(Public Health Acts Amendment Act, 1890)—	
	s. 14	641
	s. 15	641
	(1)	641
c. 60.	(Local Taxation (Customs and Excise) Act, 1890)—	
	s. 1	49
	(4)	49, 113
c. 69.	(Settled Land Act, 1890)	93
	s. 13 (11)	640
54 & 55 Vict. c. 11.	(Electoral Disabilities Removal Act, 1891), s. 2	158, 165
c. 17.	(Charitable Trusts (Recovery) Act, 1891)	106
c. 18.	(Registration of Electors Act, 1891), s. 2	240, 248
c. 39.	(Stamp Act, 1891)—	
	s. 59	615
	Sched.	615
c. 56.	(Elementary Education Act, 1891)	6, 12, 15, 39, 79, 81
	s. 1	50
	(2)	12
	s. 2	31
	s. 3	31
	s. 4	31
	s. 8	31
	s. 9	31
	s. 10	31
c. 61.	(Schools for Science and Art Act, 1891)	24
c. 68.	(County Councils (Elections) Act, 1891)—	
	s. 1	357
	(1)	356
	(4)	357
	s. 2	241
	(1)	245
	(2)	245
	s. 3	357
c. 96.	(Public Health (London) Act, 1891), s. 80 (4)	142
c. lxxvii.	(London Overhead Wires Act, 1891)	642
	s. 2	642
	s. 17	642
	s. 18	642
55 & 56 Vict. c. 19.	(Statute Law Revision Act, 1892), s. 1	611
c. 29.	(Technical and Industrial Institutions Act, 1892)—	
	s. 2	121
	s. 3	121
	s. 4	121
	s. 5	121
	s. 6	121
	s. 7	121
	s. 8	121
	s. 9	121
	s. 10	121
c. 53.	(Public Libraries Act, 1892)	15
c. 57.	(Private Street Works Act, 1892)	643
c. 59.	(Telegraph Act, 1892)	572, 584
56 & 57 Vict. c. 14.	(Statute Law Revision Act, 1893)	82, 83, 207
c. 42.	(Elementary Education (Blind and Deaf Children) Act, 1893)	6, 12, 15, 39, 40, 41, 79, 81
	s. 1	55, 61
	s. 2	83
	(1)	41
	(2)	42
	(3)	42
	s. 3	42
	s. 4	41
	s. 7	45
	(2)	45
	s. 8	43
	s. 9	44
	s. 10 (1)	44, 143
	(2)	44

PAGE

56 & 57 Vict. c. 42. (Elementary Education (Blind and Deaf Children) Act, 1893)—
s. 11 55
s. 12 12, 45, 49
s. 13 83
s. 14 45
s. 15 41
(1) 41
s. 18 (2) 41
c. 51. (Elementary Education (School Attendance) Act, 1893) 6, 12, 15, 39, 79, 81
s. 1 59, 61
s. 2 56, 62, 64
c. 61. (Public Authorities Protection Act, 1893)—
s. 1 463
s. 2 463
c. 68. (Isolation Hospitals Act, 1893), s. 23 142
c. 73. (Local Government Act, 1894) . 389, 393, 491, 504, 643
s. 2 191
(1) 202, 246
s. 3 191
(6) 501
(8) 389
s. 6 118
s. 20 376
(3) 191, 192, 390
(5) 390, 503
(6) 389
(a) 390
(b) 390
(7) 393
s. 21 548
(3) 501
s. 23 191
(3) 362
(4) 362
(5) 362, 396, 397, 500
(6) 361, 362
s. 24 548
(3) 389
(4) 376, 501
s. 25 548, 553
s. 29 553
s. 30 397
s. 31 190
(1) 396, 500
s. 43 191, 248
s. 44 223
(1) 191, 192
(4) 256
(5) 243
(6) 234, 241
(7) 235, 244
s. 46 (8) 535
s. 47 (4) 382
s. 48 362, 373, 374, 375, 387, 491
(1) 382
(2) 500, 501, 503, 516
(3) . 141, 364, 368, 376, 500, 501, 503, 511, 516
(a) 368
(b) 364, 368, 407, 408
(4) 501, 503
(b) 362, 390
(5) 362, 504
(6) 373
(7) 363, 373
(8) 502
s. 52 (1) 118

		PAGE
56 & 57 Vict. c. 73.	(Local Government Act, 1894)—	
	s. 58	52, 555
	s. 59	382, 393
	(1)	375
	(2)	376
	s. 68	16, 73
	s. 75 (2)	192
	s. 80	504
	Sched. I.	363, 386, 387, 389
c. xxv.	(Kensington, Knightsbridge, and Chelsea Electric Lighting Co., Ltd., Act, 1893)	618
c. lxxxv.	(City of London Electric Lighting Co., Ltd., Act, 1893)	618
	s. 5	623
c. ccii.	(London County Council Subways Act, 1893)	617
57 & 58 Vict. c. 9.	(Solicitors Act, 1894), s. 3	91
c. 16.	(Judicature (Procedure) Act, 1894)—	
	s. 1 (5)	256, 460
	s. 4	409
c. 28.	(Notice of Accidents Act, 1894), s. 6	615
c. 35.	(Charitable Trusts (Places of Religious Worship) Amendment Act, 1894)	106
c. ciii.	(Cheltenham College Act, 1894)	97
c. ccxiii.	(London Building Act, 1894)—	
	s. 75	623
	s. 76	623
	s. 145	577
58 & 59 Vict. c. 11.	(Lands Clauses (Taxation of Costs) Act, 1895)	549
c. 16.	(Finance Act, 1895), s. 12	600
c. 40.	(Corrupt and Illegal Practices Prevention Act, 1895)	281, 349, 422
	s. 1	299, 533
	s. 2	299
	s. 3	540
	s. 4	300
	s. 5	264
59 & 60 Vict. c. 1.	(Local Government (Elections) Act, 1896)	387
	s. 1 (1)	388, 501
c. 14.	(Short Titles Act, 1896)	99
	Sched. II.	117
c. 16.	(Agricultural Rates Act, 1896)	48
c. 40.	(Telegraph Act, 1896)	572, 584
c. 48.	(Light Railways Act, 1896)	551, 583, 584
c. 50.	(Poor Law Officers Superannuation Act, 1896), s. 14	87
60 & 61 Vict. c. 5.	(Voluntary Schools Act, 1897)	6
c. 29.	(Poor Law Act, 1897), s. 1	88
c. 31.	(Cleansing of Persons Act, 1897), s. 1	142
c. 32.	(School Board Conference Act, 1897)	46
c. 41.	(Telegraph Act, 1897)	572, 584
c. xx.	(Mason University College Act, 1897)	96
c. cxxxiii.	(City of London Sewers Act, 1897), s. 5	548
61 & 62 Vict. c. 45.	(Metropolitan Poor Act, 1897), s. 1	89
c. 55.	(Universities and College Estates Act, 1898)	93, 98
	s. 1	93
	s. 2	93
	s. 3	93
	Sched. III	93
c. 57.	(Elementary School Teachers' Superannuation Act, 1898)	128
	s. 1 (2) (b)	128
	(c)	129
	(d)	129
	(3)	128
	(4)	128
	(5)	128
	s. 2 (1)	129
	(2)	129
	(3)	129
	s. 3	129
	(1)	129

PAGE

61 & 62 Vict. c. 57. (Elementary School Teachers' Superannuation Act, 1898)—
s. 4 129
s. 5 128
s. 5 (2) (a) 129
s. 6 128
(1) (c) 129
s. 7 130
s. 8 (2) 129
s. 9 (2) 128
s. 11 128
c. 58. (Marriage Act, 1898) 150
c. 62. (University of London Act, 1898) 95
s. 1 95
s. 2 95
s. 3 95
s. 8 96
c. ccxxxiii. (Chelsea Electricity Supply Co., Ltd., Act, 1898) . . 618
s. 7 623
c. ccxxxv. (Metropolitan Electric Supply Co., Ltd., Act, 1898) . 618, 620
62 & 63 Vict. c. 13. (Elementary Education (School Attendance) Act, 1893, Amendment Act, 1899) . . 6, 12, 15, 39, 79, 81
s. 1 59, 61, 62, 68
c. 14. (London Government Act, 1899) . 259, 359, 393, 616, 617
s. 2 (1) 395
(3) 396
(4) 500, 504
(5) 190, 396, 500
s. 3 (2) 397
(3) 397
(4) 246
s. 4 548, 553
(1) 553
s. 10 553
s. 14 553, 555
s. 19 53
s. 31 (3) 259
s. 34 190
c. 19. (Electric Lighting (Clauses) Act, 1899) . 543, 545, 548, 556, 564, 618, 627, 628, 640, 643
s. 1 542, 544, 549
s. 2 552
(2) 544
(3) 544
Sched. . 544, 546, 547, 549, 550, 551, 555, 556, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 571, 572, 573, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 586, 587, 588, 589, 590, 591, 592, 593, 594, 596, 597, 598, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 615, 617, 619, 620, 622, 624, 628, 629, 630, 633, 639, 642
c. 24. (University of London Act, 1899), s. 1 96
c. 30. (Commons Act, 1899), s. 22 118
c. 32. (Elementary Education (Defective and Epileptic Children) Act, 1899) . . 6, 12, 15, 39, 40, 79, 81
s. 1 (1) 41, 42
(2) 42
(3) 42
(4) 42
s. 2 (1) 42
(2) 42
(3) 43
(4) 43
(5) 43
(6) 45
s. 3 21
s. 4 (1) 55, 61

		PAGE
62 & 63 Vict. c. 32.	(Elementary Education (Defective and Epileptic Children) Act, 1899)—	
	s. 4 (2)	57
	s. 5	41, 45
	s. 6	43
	s. 7	12, 45, 49
	s. 8 (1)	44
	(2)	44
	(3)	44
	s. 9	82
	s. 10	42
	s. 11	40, 55
	s. 12	43
	s. 13	45
	s. 14	41
c. 33.	(Board of Education Act, 1899)—	
	s. 1 (1)	8, 9
	(2)	8
	(4)	8
	(5)	8
	s. 2 (1)	9, 24
	(2)	13, 15
	s. 3	114
	(1)	10
	(2)	23
	s. 4	9
	s. 5	9
	s. 6 (1)	8
	(2)	8
	s. 7	8
	s. 8 (1)	8
	(2)	8
c. 38.	(Telegraph Act, 1899)	584
c. 49.	(Appropriation Act, 1899)	49
c. lxxviii.	(South Eastern Railway Act, 1899)	618
c. lxxxiii.	(Kensington and Notting Hill Electric Lighting Companies Act, 1899)	618, 620, 622
	s. 12	622
	s. 17	623
	s. 18	623
c. lxxxviii.	(Westminster Electric Supply Corporation, Ltd., Act, 1899)	618, 620, 622
c. xciv.	(St. James and Pall Mall Electric Lighting Co., Ltd., Act, 1899)	618, 622
	s. 13	623
63 Vict. c. 3.	(Electoral Disabilities (Military Service) Removal Act, 1900)	
	s. 1	165
	s. 3	165
63 & 64 Vict. c. 29.	(London County Council Electors Qualification Act, 1900)	191
	s. 2	191, 245
c. 53.	(Elementary Education Act, 1900)	6, 12, 15, 39, 79, 81
	s. 2	82
	s. 6 (1)	59
	(2)	58, 60
	(4)	59
	s. 7	62, 63
	s. 9	15
c. xix.	(Birmingham University Act, 1900)	91, 96
	s. 14	93
c. ccxxvii.	(Charing Cross and Strand Electricity Supply Corporation, Ltd. (Further Powers) Act, 1900)	618, 620, 622
	s. 18	620
c. ccxxxi.	(County of Durham Electric Power Supply Co. Act, 1900)	627, 633
	s. 2	629

		PAGE
63 & 64 Vict. c. ccxxxi.	(County of Durham Electric Power Supply Co. Act, 1900)—	
	s. 4	628
	s. 6	631
	s. 7	629, 631
	s. 8	631, 632, 633
	(4) (d)	632
	s. 9	631, 633
	s. 10	631, 633
	s. 11	631, 632
	s. 12	634
	s. 15	630
	s. 30	629
	s. 31	634
	s. 33	634
	s. 34	629
	s. 39	629, 630
c. ccxxxv.	(Lancashire Electric Power Act, 1900)	627, 628, 630
	s. 2	627, 628, 633
	s. 3	629
	s. 5	630
	s. 45	632
	s. 46	633
	s. 48	634
c. cclxxvi.	(North Metropolitan Electric Power Supply Act, 1900)	627, 633
	s. 4	618
	s. 7	618, 631
	s. 8	633
	s. 9	633
	s. 10	633
	s. 11	618, 631
	s. 29	633
c. cclxxxii.	(South Wales Electrical Power Distribution Co. Act, 1900)	627
	s. 6	629
	s. 9	629
	s. 36	631
	s. 37	634
	s. 38	632
	s. 39	633
	s. 40	632
	s. 46	634
1 Edw. 7, c. 22.	(Factory and Workshop Act, 1901)	5, 12, 63, 67, 69
	s. 35	68
	s. 68	62
	(1) (i.)	68
	(ii.)	68
	(iii.)	68, 70
	(1) (a)	68
	(b)	68
	(c)	68
	(2)	68
	(3)	70
	s. 69	69
	s. 70	70
	s. 71	69
	s. 72	70
	(2)	70
	s. 79	644
	s. 85	644
	ss. 104—106	644
	s. 134	70
	s. 138 (2)	69
	s. 156 (1)	67
	s. 161 (2)	68, 69
	Sched. VI.	644
c. lxxviii.	(Notting Hill Electric Lighting Co., Ltd. Act, 1901)	618
	s. 6	623

		PAGE
1 Edw. 7, c. civ.	(Cleveland and Durham County Electric Power Act, 1901)	627
	s. 46 (7)	585
	s. 54	631
	s. 55	633
	s. 62	633
c. cxvi.	(Yorkshire Electric Power Co. Act. 1901)	627
	s. 3	630
	s. 4	628
	s. 7	630
	s. 30	630
	s. 48	631, 632
	(4)	632
	s. 62	632, 633
	s. 66	633
	s. 67	633
c. cxxi.	(Derbyshire and Nottinghamshire Electric Power Co. Act, 1901)	627
c. cxcv.	(Stalybridge, Hyde, Mossley and Dukinfield Tramways and Electricity Board Act, 1901)	557
c. ccxxi.	(Arlesey Gas Act, 1901), s. 52	631
c. ccxxviii.	(Metropolitan Electric Supply Co., Ltd., Act, 1901)	618, 620
c. ccli.	(West Cumberland Electric Tramways Co. Act, 1901)	627
2 Edw. 7, c. 14.	(University of Wales Act, 1902)	91
c. 42.	(Education Act, 1902)	6, 12, 15 16, 18, 20, 22, 25, 28, 37, 39, 51, 53, 59, 79, 81, 115
	s. 1	17
	s. 2 (1)	10, 22, 23, 49
	(2)	22
	(3)	53
	s. 3	23
	s. 4	24
	s. 5	25, 29, 35, 38, 41, 58, 59, 71
	s. 6 (1)	34
	(2)	35
	(3)	39
	(a)	34
	(b)	34
	(17)	20
	s. 7	20, 30, 38
	(1)	29, 36
	(a)	36
	(b)	37
	(c)	37
	(d)	37
	(e)	37
	(2)	38
	(3)	37, 38
	(4)	29, 30, 49
	(5)	38
	(6)	38
	(7)	37, 38, 39
	s. 8 (1)	26
	(2)	26
	(3)	26
	s. 9	26, 29
	s. 10	12, 49, 50
	s. 11 (1)	35
	(2)	35
	(3)	35
	(4)	35
	(5)	35
	(6)	39
	(7)	35
	(8)	35
	s. 12	39
	(3)	34

		PAGE
2 Edw. 7, c. 42.	(Education Act, 1902)—	
	s. 13	40
	(2)	48
	s. 14	39
	s. 15	11, 29, 30
	s. 16	12, 14
	s. 17 (1)	19, 23
	(2)	20
	(3)	19
	(4)	20
	(5)	19, 45
	(6)	19
	(7)	13
	(8)	20, 114
	s. 18	23
	(1)	47
	(a)	47
	(b)	47
	(c)	48
	(d)	48
	(2)	11, 46
	(3)	52
	(4)	47
	(5)	52
	s. 19 (1)	23, 50
	(2)	51
	s. 20 (a)	46
	(b)	19
	s. 21 (2)	19
	(3)	19
	s. 22	13, 18
	(1)	29
	(2)	29
	s. 23 (1)	22, 24
	(2)	22
	(3)	19
	(4)	23
	(5)	118
	(6)	20
	(7)	20
	(8)	17
	(9)	15
	(10)	14
	s. 24	15
	(2)	34, 53
	(5)	35
	s. 25	41, 46
	s. 27 (1)	52
	Sched I.	34, 35, 39, 53
	Sched. II.	16, 19, 22, 25, 37, 41, 47, 50, 127
	Sched. III.	13, 23, 25, 39, 42, 50, 53, 59, 65, 121
	Sched. IV.	22, 23, 41, 46
c. xvii.	(Derbyshire and Nottinghamshire Electric Power Co. Act, 1902)	627
c. xxi.	(Newcastle-upon-Tyne Electric Supply Co. Act, 1902)	627, 629, 630
	s. 15	631
c. xxxiv.	(Cornwall Electric Power Co. Act, 1902)	627
	s. 43	631
	s. 45	632
	s. 51	634
c. lv.	(Gloucestershire Electric Power Co. Act, 1902)	627
	s. 47	631
	s. 60	634
c. cxviii.	(South Wales Electrical Power Distribution Co. Act, 1902)	627
c. cxxvii.	(Kent Electric Power Co. Act, 1902)	627
	s. 3	630
	s. 51	631, 632

		PAGE
2 Edw. 7, c. cxxxi.	(Leicestershire and Warwickshire Electric Power Co. Act, 1902)	627
	s. 30	629
	s. 55	632
	s. 57	632
	s. 64	634
c. clvi.	(North Metropolitan Electric Power Supply Co. Act, 1902)	627
	s. 3	631
c. ccxxxii.	(Swansea Corporation Act, 1902)—	
	s. 42	639
	s. 59	639
c. ccxli.	(York Corporation Act, 1902), s. 4	639
3 Edw. 7, c. 10.	(Education (Provision of Working Balances) Act, 1903)	51
c. 13.	(Elementary Education Amendment Act, 1903), s. 1	45
c. 19.	(Poor Law (Dissolution of School Districts and Adjustments) Act, 1903)—	
	s. 1	85
	s. 2 (1)	85
c. 24.	(Education (London) Act, 1903)	6, 15, 16, 52, 79, 81
	s. 2 (1)	53
	(2)	53
	(3)	53
	s. 3 (1)	52
	(2)	53
	s. 4 (2)	53
	s. 5 (1)	52
	Sched. I.	22, 52, 53, 54
c. 39.	(Housing of the Working Classes Act, 1903)—	
	s. 3	569
	s. 16	569
	Sched.	569
c. 45.	(Employment of Children Act, 1903)	62
	s. 6 (3)	65
c. vii.	(Stoke Newington Borough Council Act, 1903)	616, 620
c. xxv.	(Cleveland and Durham County Electric Power Co. Act, 1903)	627
c. xlvii.	(Electric Lighting Orders Confirmation (No. 3) Act, 1903)	636
c. cviii.	(West Cumberland Electric Tramways Co. Act, 1903)	627
c. clxv.	(Blackheath and Greenwich District Electric Light Company's Act, 1903)	618, 620
	s. 7	624
	s. 9	623
	s. 10 (1)	620
	(2)	621
c. clxxiv.	(Newcastle-upon-Tyne Electric Supply Co. Act, 1903)	627
	s. 20	628
c. clxxvii.	(Woolwich Borough Council Act, 1903)	616
	s. 3	624
c. clxxxi.	(Willesden Urban District Council Act, 1903), s. 7	639
c. cux.	(Carmarthenshire Electric Power Co. Act, 1903)	627
c. ccxiv.	(Somerset and District Electric Power Co. Act, 1903)	627, 635
	s. 7	629
	s. 30	629
	s. 50	631
c. ccxxxii.	(Liverpool University Act, 1903)	91, 96
	s. 12	92
c. ccxxxvii.	(Shropshire, Worcestershire and Staffordshire Electric Power Co. Act, 1903)	627
	s. 4	628
	s. 61	634
c. ccxxxviii.	(North Western Electricity and Power Gas Act, 1903)	627
	s. 26	631
	s. 28	633
	s. 34	565
	s. 99	634

		PAGE
3 Edw. 7, c. cclxiii.	(North Metropolitan Electric Power Supply Co. Act, 1903)	627
4 Edw. 7, c. 3.	(Telegraph Act, 1904)	584
c. 11.	(University of Liverpool Act, 1904)	91, 96
c. 12.	(Leeds University Act, 1904)	91
c. 13.	(London Electric Lighting Areas Act, 1904)—	
	s. 1	617
	s. 2	617
	ss. 3, 4	617
	s. 4 (1) (b)	617
	s. 5	617
	s. 6	617
	s. 7	618
	ss. 8, 13	617
	s. 10	618
c. 18.	(Education (Local Authority Default) Act, 1904)	613
c. 20.	(Poor Law Authorities (Transfer of Property Act), 1904), s. 1	85, 86
c. 24.	(Telegraph Act, 1904)	584
c. xiii.	(Victoria University of Manchester Act, 1904)	96
	s. 11	92
c. xxxv.	(University of Leeds Act, 1904)	91
	s. 10	92
c. xl.	(St. Marylebone Electric Lighting Act, 1904)...554, 616, 642	
	s. 5	623
	s. 13	622
	s. 16	623
	s. 18	623
	s. 20	624
	s. 34	620
c. liv.	(Lancashire Electric Power Co. Act, 1904)	627
	s. 2	630
	s. 4	635
c. lxxiii.	(Leicestershire and Warwickshire Electric Power Co. Act, 1904)	627
c. lxxvii.	(Derbyshire and Nottinghamshire Electric Power Co. Act, 1904)	627
	s. 3	634
c. cix.	(North Western Electricity and Power Gas Co. Act, 1904)	627
c. clxxvi.	(Electric Lighting Orders Confirmation (No. 3) Act, 1904)	636
c. clxxvii.	(Electric Lighting Orders Confirmation (No. 4), Act, 1904)	637, 638
c. clxxviii.	(Electric Lighting Orders Confirmation (No. 2) Act, 1904)	636
c. ccxiii.	(North Wales Electric Power Co. Act, 1904)	627, 629
	s. 3	629
	s. 4	628
	s. 18	630
	s. 35	631
	s. 36	633
	s. 37	633
	s. 43	634
c. ccxl.	(Leyton Urban District Council Act, 1904), s. 65	639
5 Edw. 7, c. 18.	(Unemployed Workmen Act, 1905), s. 1 (7)	142
c. i.	(Leeds Corporation (Consolidation) Act, 1905), s. 107	639
c. viii.	(West Cumberland Electric Tramways Act, 1905)	627
c. xvi.	(Chelsea Electricity Supply Co., Ltd., Act, 1905)	618
c. xliii.	(Accrington Corporation Act, 1905), s. 76	639
c. xlix.	(South Wales Electrical Power Distribution Co. Act, 1905)	627
	s. 9	630
c. lxiii.	(Morley Corporation Act, 1905), s. 21	639
c. lxxix.	(Electric Lighting Orders Confirmation (No. 1) Act, 1905)	637
c. xci.	(University College, London, Transfer Act, 1905)	96
	s. 15	95

		PAGE
5 Edw. 7, c. cxiii.	(Electric Lighting Orders Confirmation Act, 1905)	635, 636
c. cxiv.	(Electric Lighting Orders Confirmation (No. 6) Act, 1905)	636, 637
c. cxlvi.	(Metropolitan Electric Supply Co., Ltd., Act, 1905)	618
	s. 3	624
c. clii.	(University of Sheffield Act, 1905)	91, 97
	s. 9	92
c. clx.	(Shropshire, Worcestershire and Staffordshire Electric Power Co. Act, 1905)	627
c. clxi.	(Woolwich Borough Council Act, 1905)	616, 622
	s. 7	623
	s. 8	623
	s. 19	620
	s. 20	623
c. clxxiv.	(County of London Electric Supply Co., Ltd., Act, 1905)	618, 622
	s. 11	622
	s. 18	623
	s. 19	623
	s. 21	621
	s. 22	623
	s. 24	624
c. clxxvi.	(North Metropolitan Electric Power Supply Co. Act, 1905)	618, 627
c. clxxxv.	(Central Electric Supply Co., Ltd., Act, 1905)	618, 620, 622
	s. 9	623
	s. 10	623
	s 12	622
	ss. 13, 14	624
c. cxcii.	(Electric Lighting Orders Confirmation (No. 9) Act, 1905)	636, 637
c. cc.	(Metropolitan Electric Supply Co., Ltd., Act, 1905)	618, 620, 626
	s. 3	626
	s. 27	621
	s. 30	624
	s. 31	622
6 Edw. 7, c. 13.	(Telegraph Act, 1906)	584
c. 53.	(Notice of Accidents Act, 1906), s. 4	615
c. 57.	(Education (Provision of Meals) Act, 1906)	6
	s. 1	32, 33
	s. 2 (1)	33
	(2)	33
	s. 3	33
	s. 4	33, 143
	s. 5 (1)	32
	(2)	32
	s. 6	33
c. xcii.	(Cumberland Electricity and Power Gas Act, 1906)	627
	s. 2	627
	s. 6	628
	s. 8	629
	s. 14	629
	s. 20	630
	s. 22	631
	s. 23	632, 633
	s. 25	633
	s. 81 (3)	585
	s. 86 (6)	585
	s. 93	634
	s. 95	634
	s. 104	634
c. cx.	(Electric Lighting Orders Confirmation (No. 5) Act, 1906)	635, 636, 637
c. cxxix.	(Electric Lighting Orders Confirmation (No. 4) Act, 1906)	637
c. cxxx.	(Electric Lighting Orders Confirmation (No. 7) Act, 1906)	637

		PAGE
6 Edw. 7, c. cxlvii.	(Derbyshire and Nottinghamshire Electric Power Co. Act, 1906)	627
	s. 22	630
c. cl.	(London County Council (General Powers) Act, 1906) ss. 27—29	624
c. clviii.	(Newcastle-upon-Tyne Electric Supply Co. Act, 1906)	627
	s. 4	628
	s. 7	635
	ss. 9—16	631
c. clxv.	(Kent Electric Power Co. Act, 1906)	627
	s. 16	631
	s. 22	630
	s. 33	630
c. clxxxii.	(County of Durham Electric Power Supply Co. Act, 1906)	627
	s. 4	630
	s. 6	629
	s. 7	630, 631
	s. 8	632
	s. 14	633
	s. 15	634
	s. 37	632
c. clxxxv.	(Shropshire, Worcestershire and Staffordshire Electric Power Co. Act, 1906)	627
	s. 13	624
	s. 14	624
	s. 42	632
	s. 46	634
c. cxci.	(Hackney Electricity Act, 1906)	616
	s. 3	622
	s. 4	623
	s. 5	622
	s. 6	624
	s. 8	623
c. cxcv.	(Saint Pancras Electricity Act, 1906)	616
	s. 2	622
	s. 3	623
	s. 5	623
	s. 6	622
c. cxcvii.	(South Wales Electrical Power Distribution Co. Act, 1906)	627
c. cxcix.	(Lancashire Electric Power Co. Act, 1906)	627, 628, 633
	s. 2	628
	s. 4	628
	s. 5	631, 632
	(2)	632
	s. 12	633
	(2)	633
	s. 17	634
	s. 19	635
c. cciv.	(Metropolitan Electric Supply Co., Ltd., Act, 1906)	618, 626
	s. 3	626
	s. 7	624
	s. 13	622
	s. 15	624
	s. 16	622
	s. 17	622
7 Edw. 7, c. 6.	(Telegraph Act, 1907)	584
c. 9.	(Territorial and Reserve Forces Act, 1907), s. 23 (2)	278
c. 13.	(Finance Act, 1907), s. 17	48, 49
c. 20.	(Appropriation Act, 1907)	11
c. 33.	(Qualification of Women (County and Borough Councils) Act, 1907), s. 1 (1)	353
c 43.	(Education (Administrative Provisions) Act, 1907)	6, 15, 79, 81
	s. 1 (1)	24
	(2)	24, 26

		PAGE
7 Edw. 7, c. 43.	(Education (Administrative Provisions) Act, 1907)—	
	s. 1 (2) (i)	24
	(iii.)	24
	(3)	24
	(4)	24
	(6)	21, 24
	s. 2	120
	s. 3	51
	s. 4 (1)	46
	(2)	51
	s. 5	48
	s. 6	52, 74
	s. 7	45
	s. 8	51
	s. 10	18
	s. 11	18
	s. 12	22
	s. 13	12, 18, 22
	(1)	32
	(a)	32
	(b)	31, 32
	s. 14	56
	(1)	60, 64
	s. 15	14
	s. 16	127
	(4)	127
	(5)	127
c. 53.	(Public Health Acts Amendment Act, 1907), s. 95	570
c. liv.	(Electric Lighting Order Confirmation (No. 2) Act, 1907)	638
c. lvii.	(Electric Lighting Orders Confirmation (No. 5) Act, 1907)	636
	s. 5	638
c. lxxvii.	(Rawtenstall Corporation Act, 1907)	639
c. xci.	(Electric Supply Corporation, Ltd., Act, 1907)	562
c. xcviii.	(North Metropolitan Electric Power Supply Co. Act, 1907)	627
	s. 2	629
	s. 4	628, 630
	s. 6	631
	s. 7	631
	s. 8	632
	s. 9	632
	s. 11	632
	s. 21	633
	s. 22	635
	s. 29	629
c. xcix.	(Richmond (Surrey) Electricity Supply Act, 1907)	562
c. cxl.	(City of London (Unification of Parishes) Act, 1907), s. 15	552
8 Edw. 7, c. 20.	(University of Durham Act, 1908)	95
	s. 1	95
	s. 2	95
	s. 3	95
	s. 4	95
	Sched. I.	95
c. 21.	(Registration Act, 1908)	251
	s. 1 (1)	249, 250, 251
	(2)	250
c. 30.	(Appropriation Act, 1908)	11
c. 33.	(Telegraph Act, 1908)	584
c. 39.	(Endowed Schools (Masters) Act, 1908)	98, 99, 106, 125
	s. 3	103
	s. 4	99
c. 40.	(Old Age Pensions Act, 1908), s. 1 (4)	143
c. 66.	(Public Meetings Act, 1908)—	
	s. 1	300, 349
	s. 21 (2)	300

		PAGE
8 Edw. 7, c. 67.	(Children Act, 1908)	5, 15, 58, 71
	s. 37	124
	s. 44	58
	(1)	71
	(2)	73
	ss. 44—93	71
	s. 45	74
	s. 46 (1)	72
	(2)	72
	(3)	72
	s. 47	72, 75
	s. 48	75
	s. 49	75, 80
	s. 51	74
	s. 52	74, 75, 80
	s. 53	77
	s. 54	74
	s. 55	75
	s. 56 (1)	75
	s. 57	71
	s. 58	56, 72
	(5)	83
	(6)	58, 72
	(7)	58
	s. 61	72
	s. 62	72
	(2)	72
	s. 64	72
	s. 65	72
	(a)	72
	(b)	72
	s. 66	43, 72
	(2)	75
	(3)	72
	(i.)	72
	(ii.)	72
	(a)	72
	(b)	72
	s. 67 (1)	76
	(2)	77
	(3)	77
	(4)	77
	(5)	77
	(6)	77
	s. 68 (1)	77
	(2)	77
	(3)	77
	(a)	77
	(b)	77
	(c)	77
	(4)	77
	(5)	77
	(6)	77
	s. 69 (1)	76
	(2)	76
	(a)	76
	(b)	76
	(c)	75
	(3)	76
	s. 70	77
	s. 71 (1)	75, 76
	(2)	75
	(3)	76
	s. 72 (1)	75
	(2)	75
	(4)	75
	(5)	76
	(6)	76

		PAGE
8 Edw. 7, c. 67.	(Children Act, 1908)—	
	s. 73	73, 77
	s. 74	76
	(1)	73
	(2)	73
	(3)	73
	(4)	73
	(5)	73
	(6)	74
	(7)	73
	(8) (a)	74
	(b)	74
	(9)	74
	(10)	76
	(11)	73, 83
	(12)	79
	(13) (a)	79
	(b)	79
	(14)	79
	(15)	74
	(16)	74
	(17)	73
	(18)	73
	s. 75 (1)	78
	(2)	78
	(a)	78
	(b)	78
	(3)	78, 81
	(4)	78
	(5)	78
	(6)	78
	(7)	78
	(8)	78
	(9)	78
	(10)	78
	(11)	78
	s. 76	79
	(1)	79
	(2)	79
	s. 77	71
	(1)	79, 80
	(2)	80
	(3)	71, 80
	(4)	79
	s. 78	58, 71
	(1)	80
	(3)	80
	s. 79	57, 58, 71, 80
	s. 80	71, 80
	(a)	81
	(b)	81
	s. 81	71, 80
	s. 82	71
	(1)	81
	(2)	81
	(3)	81
	s. 83	58, 71, 80
	s. 87 (3)	75
	(4)	75
	s. 88 (1)	74
	(7)	74
	s. 122	20, 32
	s. 134 (2)	73
	(3)	43, 74
	Sched. III.	58
c. xx.	(Rochdale Corporation Act, 1908), s. 35	639
c. xxxix.	(King's College, London (Transfer) Act, 1908)	96

PAGE

8 Edw. 7, c. lxxi. (South Wales Electrical Power Distribution Co. Act, 1908) 627
s. 15 627
c. cvii. (London County Council (General Powers) Act, 1908)—
s. 15 623
s. 16 623
s. 17 623
c. cxv. (Electric Lighting Orders Confirmation (No. 1) Act, 1908) 636, 637, 638
s. 5 638
s. 6 638
c. cxvii. (Electric Lighting Orders Confirmation (No. 3) Act, 1908) 635, 636
s. 22 624
c. clxvii. (London Electric Supply Act, 1908) . 616, 617, 618, 619
s. 2 618, 619
s. 3 619, 620, 621
s. 4 620
(5) 620
s. 5 623
s. 6 621
s. 7 621
s. 8 621
s. 9 624
s. 10 624
s. 11 624
s. 12 624
s. 13 623
s. 14 624
s. 15 620
s. 16 623
s. 17 622
s. 18 622
s. 19 622
s. 20 624
s. 21 624
s. 23 (1) 625
(2) 625, 626
(3) 625
(4) 626
(5) 625
(6) 625
s. 24 626
s. 25 626
s. 26 626
s. 27 626
ss. 28—30 625
s. 31 624
Sched. I. 618
c. clxviii. (London (Westminster and Kensington) Electric Supply Companies Act, 1908) 617, 618, 619
s. 2 619
s. 3 620
s. 4 620
(5) 620
s. 5 626
s. 6 621
s. 7 626
s. 8 626
s. 9 621
(4) 621
s. 11 626
s. 12 626
s. 13 620
s. 14 623, 624
s. 15 623
s. 16 622
s. 17 622

		PAGE
8 Edw. 7, c. clxviii.	(London (Westminster and Kensington) Electric Supply Companies Act, 1908)—	
	s. 18	624
	s. 19	624
	s. 20	624
9 Edw. 7, c. 5.	(Appropriation Act, 1909)	11
c. 11.	(Judicature (Rule Committee) Act, 1909)	409
c. 13.	(Local Education Authorities (Medical Treatment) Act, 1909)	6
	s. 1	32
	s. 2	32
	s. 3	32
	s. 4	32
c. 20.	(Telegraph Act, 1909)	584
c. 29.	(Education (Administrative Provisions) Act, 1909)	6
	s. 1	20
	s. 2	52
	s. 3	46
	s. 4	127
	s. 5	22
	s. 6	42
c. 30.	(Cinematograph Act, 1909)	644
c. 34.	(Electric Lighting Act, 1909)	542, 545, 546, 549, 560
	s. 1	564, 568, 569, 574, 622
	(1)	557
	(2)	557, 568
	(3)	559
	s. 2	570, 622
	s. 3	558, 559, 620, 638
	s. 4	558, 620
	(1)	558, 559
	(3)	595
	s. 5	621
	(1)	595
	(2)	557, 595
	(3)	557, 595
	s. 6	601
	(1)	596
	(2)	596
	(3)	601, 602, 604
	(4)	596
	(7)	602, 604
	s. 7 (1)	601
	(2)	601
	s. 8	556
	s. 9	558
	s. 10	544, 594
	(1)	594
	(2)	594
	s. 11	544, 596
	s. 12	605, 638
	s. 13	605
	s. 14	562
	s. 15	590, 623, 633, 638
	s. 16	614, 615, 624, 638
	s. 17	598, 638
	s. 18	590, 598, 638,
	s. 19	543, 616
	s. 20	562
	s. 21	554
	s. 22	566, 623
	s. 23	543, 563, 639, 640
	s. 24	557
	s. 25	543, 552
	s. 27 (2)	542, 547
	(3)	601
	Sched. I.	568
	Sched. II.	596, 597

		PAGE
9 Edw. 7, c. 39.	(Oaths Act, 1909)	319
c. xii.	(North Metropolitan Electric Power Supply Co. Act, 1909)	627
	s. 5	631
c. xxxvi.	(County of Durham Electric Power Supply Co. Act, 1909)	627
c. xlii.	(University of Bristol Act, 1909)	91, 97
	s. 10	92, 93
c. lxxviii.	(Kent Electric Power Co. Act, 1909)	627
c. lxxxix.	(Oldham Corporation Act, 1909), s. 56	639
c. cxli.	(Electric Lighting Orders Confirmation (No. 1) Act, 1909)	636, 637, 638
c. clix.	(Bury Corporation Act, 1909), s. 85	639

TABLE OF CASES.

A.

PAGE

ABEL *v.* Lee (1871), L. R. 6 C. P. 365; 40 L. J. (C. P.) 154; 23 L. T. 844; 19 W. R. 625 172

Ackers *v.* Howard, Thornbury Division of Gloucestershire Election Petition. *See* Thornbury Division of Gloucestershire Election Petition, Ackers *v.* Howard.

Acland *v.* Lewis (1860), 9 C. B. (N. S.) 32; 1 K. & G. 334; 30 L. J. (C. P.) 29; 3 L. T. 472; 7 Jur. (N. S.) 21; 9 W. R. 123 147

Adams *v.* Bostock (1881), 8 Q. B. D. 259; 51 L. J. (Q. B.) 175; 45 L. T. 443; 46 J. P. 136; 30 W. R. 460 230

——— *v.* Ford (1885), 16 Q. B. D. 239; 55 L. J. (Q. B.) 13; 53 L. T. 666; 49 J. P. 711; 34 W. R. 64 173

——— and Lambert's Case (1602), 4 Co. Rep. 104b; Moore (K. B.), 648 . . 92

Adey *v.* Hill (1846), 4 C. B. 38; 16 L. J. (C. P.) 63; 10 Jur. 971; 1 Lut. Reg. Cas. 542 251

Ainsley *v.* Nicholson (1889), 24 Q. B. D. 144; 59 L. J. (Q. B.) 102; 61 L. T. 809; 54 J. P. 166; Fox & S. Reg. 146 228

Akenhead's Case, Cotton *v.* Prall. *See* Cotton *v.* Prall, Akenhead's Case.

Alcott *v.* Emden (1904), 68 J. P. 434; 20 T. L. R. 487; 2 L. G. R. 1313 . . 297

Alderson's Case, Bennett *v.* Brumfitt. *See* Bennett *v.* Brumfitt, Alderson's Case.

Aldridge *v.* Hurst (1876), 1 C. P. D. 410; 45 L. J. (C. P.) 431; 35 L. T. 156; 24 W. R. 708 410, 453

——— *v.* Medwin (1869), L. R. 4 C. P. 464; 38 L. J. (C. P.) 45; 19 L. T. 452; 1 Hop. & Colt. 67 210

Aldworth *v.* Dore (1848), 5 C. B. 87; 17 L. J. (C. P.) 142; 2 Lut. Reg. Cas. 67 . 251

Alexander *v.* Burke, Mount Argus Case (1887), 21 I. L. T. 68; [1899] W. N. 178; 22 L. R. Ir. 458 167, 249

——— *v.* Newman (1846), 2 C. B. 122; 15 L. J. (C. P.) 134; 10 Jur. 313; 1 Lut. Reg. Cas. 404; Bar. & Arn. 657 153

Allan *v.* Waterhouse (1884), 8 Scott (N. R.), 68; 13 L. J. (C. P.) 129; 8 Jur. 426; 1 Lut. Reg. Cas. 92 215

Allchurch *v.* Hendon Union, [1891] 2 Q. B. 436; 61 L. J. (M. C.) 27; 65 L. T. 450; 40 W. R. 86, C. A. 171, 185

Alldred *v.* West Metropolitan Trams Co., [1891] 2 Q. B. 398; 60 L. J. (Q. B.) 631; 65 L. T. 138; 55 J. P. 824; 39 W. R. 609, C. A. 579

Allen, *Re* (1859), 6 C. B. (N. S.) 334; K. & G. 258; 28 L. J. (C. P.) 256; 5 Jur. (N. S.) 1011 249, 257

——— *v.* Geddes (1870), L. R. 5 C. P. 291; 39 L. J. (C. P.) 113; 22 L. T. 169; 18 W. R. 317; 1 Hop. & Colt. 413 200, 213

——— *v.* Greensill (1847), 4 C. B. 100; 16 L. J. (C. P) 142; 11 Jur. 476; 1 Lut. Reg. Cas. 592 211, 274

——— *v.* Hearn (1785), 1 Term Rep. 56 289

——— *v.* House (1845), 7 Man. & G. 157; 8 Scott (N. R.), 987; 14 L. J. (C. P.) 79; 9 Jur. 230; 1 Lut. Reg. Cas. 255 213

Alleyn's College, Dulwich, *Re* (1876), 1 App. Cas. 68; 45 L. J. (P. C.) 28...106, 125, 126

Alliance and Dublin Consumers Gas Co. *v.* Dublin County Council, [1901] 1 I. R. 492 584

Amalgamated Society of Railway Servants *v.* Osborne, [1910] A. C. 87; 79 L. J. (CH.) 87; 101 L. T. 787; 26 T. L. R. 177; 54 Sol. Jo. 215 296

Ancketill *v.* Baylis (1882), 10 Q. B. D. 577; 52 L. J. (Q. B.) 104; 48 L. T. 342; 47 J. P. 356; 31 W. R. 233; Colt. 289, C. A. 169, 175

Anderson *v.* Cawley (1868), 19 L. T. 500 423, 424

Andrews *Re*, *Re* Streatham Vestry Election (1899), 68 L. J. (Q. B.) 683 . . 402

Anelay *v.* Lewis (1855), 17 C. B. 316; K. & G. 36; 25 L. J. (C. P.) 121; 2 Jur. (N. S.) 164; 4 W. R. 286 150

Anonymous Case (1883—1901), reported in Jelf's Corrupt and Illegal Practices Prevention Acts, p. 215 299

PAGE
Anthony *v.* Seger (1789), 1 Hag. Con. 9 323
Arch *v.* Bentinck (1887), 18 Q. B. D. 548; 56 L. J. (Q. B.) 458; 56 L. T. 360; 35 W. R. 476 438
Armagh Union *v.* Bell, [1900] 2 I. R. 371 584
Arnold *v.* Sharpe (1891), Fox & S. Reg. 252; 65 L. T. 618 234
Ash *v.* Nicholl, [1905] 1 K. B. 139; 74 L. J. (K. B.) 74; 91 L. T. 803; 69 J. P. 6; 53 W. R. 173; 21 T. L. R. 62; 3 L. G. R. 11; 1 Smith, Reg. Cas. 355 172, 233
Ashby *v.* White (1703), 2 Ld. Raym. 938; 3 Ld. Raym. 323; 1 Smith, L. C., 11th ed., 240; 14 State Tr. 695 312, 537
Ashcroft's Case, Bennett *v.* Brumfitt. *See* Bennett *v.* Brumfitt, Ashcroft's Case.
Ashmore *v.* Lees (1845), 2 C. B. 31; 15 L. J. (C. P.) 65; 9 Jur. 1109; 1 Lut. Reg. Cas. 337 149, 151
Ashton *v.* Eccles Corporation (1906), 71 J. P. 55 613
Ashton Gas Co. *v.* A.-G., [1906] A. C. 10; 75 L. J. (CH.) 1; 93 L. T. 676; 70 J. P. 49; 22 T. L. R. 82; 13 Mans. 35 634
Ashworth *v.* Hopper (1875), 1 C. P. D. 178; 45 L. J. (C. P.) 99; 33 L. T. 667; 24 W. R. 187 150
Aslatt *v.* Southampton Corporation (1880), 16 Ch. D. 143; 50 L. J. (CH.) 31; 43 L. T. 464; 29 W. R. 117 540
Astbury *v.* Henderson (1854), 15 C. B. 251; 3 C. L. R. 164; 24 L. J. (C. P.) 20; 1 Jur. (N. S.) 258; 3 W. R. 67 151, 161
Athlone Case (1880), 3 O'M. & H. 59 293
——— Borough Case (1874), 2 O'M. & H. 186 418
——— ——— Election Petition, *Re*, Sheil *v.* Ennis and Nugent (1874), 8 I. R. C. L. 240 312, 332, 476
——— Petition (1868), 19 L. T. 530 420
Atkinson *v.* Collard (1885), 16 Q. B. D. 254; 55 L. J. (Q. B.) 18; 53 L. T. 670; 50 J. P. 23; 34 W. R. 75; Colt. 375 164, 173
——— *v.* Newcastle and Gateshead Waterworks Co. (1877), 2 Ex. D. 441; 46 L. J. (EX.) 775; 36 L. T. 761; 25 W. R. 794, C. A. 592
Attercliffe Division Case (1906), 5 O'M. & H. 218 299
A.-G. *v.* Black (1805), 11 Ves. 191 126
—— *v.* Boucherett (1858), 25 Beav. 116 126
—— *v.* Brentwood School (Master) (1833), 1 My. & K. 326; 3 B. & Ad. 59 . 126
—— *v.* Christ Church, Oxford (Dean and Chapter), [1894] 3 Ch. 524; 63 L. J. (CH.) 901; 71 L. T. 472; 43 W. R. 198; 8 R. 651 . . . 102, 103
—— *v.* Christ's Hospital (Governors), [1896] 1 Ch. 879; 65 L. J. (CH.) 646; 74 L. T. 96; 60 J. P. 246; 44 W. R. 379 102
—— *v.* Clifton (1863), 32 Beav. 596; 9 L. T. 136; 9 Jur. (N. S.) 939 . . 126
—— *v.* Coopers' Co. (1812), 19 Ves. 187 126
—— *v.* Eastbourne Corporation, [1902] 1 K. B. 403; 71 L. J. (K. B.) 181; 85 L. T. 745; 66 J. P. 36; 50 W. R. 161; 18 T. L. R. 122, affirmed [1904] A. C. 155; 73 L. J. (K. B.) 259; 90 L. T. 99; 68 J. P. 393; 52 W. R. 577; 20 T. L. R. 252; 2 L. G. R. 789 600
—— *v.* Edison Telephone Co., of London, Ltd. (1880), 6 Q. B. D. 244; 50 L. J. (Q. B.) 145; 43 L. T. 697; 29 W. R. 428 549
—— *v.* Essex County Council (1907), 71 J. P. 557; 24 T. L. R. 22 . . 17, 25
—— *v.* Gas Light and Coke Co. (1877), 7. Ch. D. 217; 47 L. J. (CH.) 534; 37 L. T. 746; 26 W. R. 125 564
—— *v.* Hanwell Urban Council, [1900] 2 Ch. 377; 69 L. J. (CH.) 626; 82 L. T. 778; 48 W. R. 690; 16 T. L. R. 452, C. A. 569
—— *v.* Hartley (1820), 2 Jac. & W. 353 126
—— *v.* Louth Free School (Warden etc.) (1851), 14 Beav. 201 125
—— *v.* Magdalen College, Oxford (1847), 10 Beav. 402; 12 L. J. (CH.) 391; 11 Jur. 681 127
—— *v.* Metropolitan Electric Supply Co., Ltd., [1905] 1 Ch. 757; 74 L. J. (CH.) 384; 92 L. T. 544; 69 J. P. 169; 53 W. R. 418; 21 T. L. R. 355; 3 L. G. R. 625, C. A. 566
—— *v.* Moises (1879), Tudor, Charitable Trusts, 4th ed., 1036 105
—— *v.* Pontypridd Urban Council, [1906] 2 Ch. 257; 75 L. J. (CH.) 578; 95 L. T. 224; 70 J. P. 394; 22 T. L. R. 576; 4 L. G. R. 791, C. A. 569
—— *v.* Pontypridd Waterworks Co., [1908] 1 Ch. 388; 77 L. J. (CH.) 237; 98 L. T. 275; 24 T. L. R. 196; 6 L. G. R. 397 635
—— *v.* Price (1908), 24 T. L. R. 761 118
—— *v.* Shadwell, [1910] 1 Ch. 92 119
—— *v.* Teddington Urban Council, [1898] 1 Ch. 66; 67 L. J. (CH.) 23; 77 L. T. 426; 61 J. P. 825; 46 W. R. 88; 14 T. L. R. 32 570

PAGE

A.-G. *v.* West Gloucestershire Water Co., [1909] 2 Ch. 338; 78 L. J. (CH.) 746; 101 L. T. 258; 73 J. P. 453; 25 T. L. R. 650; 7 L. G. R. 1078, C. A. 566
—— *v.* West Riding of Yorkshire County Council, [1907] A. C. 29; 75 L. J. (K. B.) 97; 95 L. T. 845; 71 J. P. 41; 23 T. L. R. 171; 5 L. G. R. 89 12, 16, 35, 36, 38
—— *v.* Whiteley (1805), 11 Ves. 241 116
—— *v.* Wyeliffe (1747), 1 Ves. Sen. 80 126
—— *v.* Yorkshire (Woollen District) Electric Tramways, Ltd., [1907] 2 K. B. 991; 97 L. T. 343; 71 J. P. 506; 23 T. L. R. 712; 5 L. G. R. 1098 . . 551
Audenshaw Urban District Council *v.* Manchester Corporation (1907), 71 J. P. 342 636
Austin *v.* Cull (1872), L. R. 7 C. P. 227; 41 L. J. (C. P.) 153; 26 L. T. 767; 20 W. R. 863; 1 Hop. & Colt. 741 172
Aylan's Case, Trotter *v.* Walker. *See* Trotter *v.* Walker, Aylan's Case.
Aylesbury Case (1859), Wolf. & B. 10 282
———— (1886), 4 O'M. & H. 59 270, 271, 289, 290
Ayrton, *Ex parte* (1885), 2 T. L. R. 215 400

B.

BAGE *v.* Perkins (1845), 1 Lut. Reg. Cas. 255 253
Bagley *v.* Butcher, [1898] 1 Q. B. 67; 67 L. J. (Q. B) 326; 77 L. T. 525; 46 W. R. 129; 14 T. L. R. 57; 1 Smith, Reg. Cas. 137 157, 224
Bain *v.* Free Church of Scotland (1897), 34 Sc. L. R. 351; 3 Tax Cas. 537 . 93
Baird *v.* Tunbridge Wells Corporation, [1894] 2 Q. B. 867; 64 L. J. (Q. B.) 145; 71 L. T. 211; 59 J. P. 36; 9 R. 479, C. A. 643
Baker *v.* Locke (1864), 18 C. B. (N. S.) 52; Hop. & Ph. 137; 34 L. J. (C. P.) 49; 11 L. T. 567; 11 Jur. (N. S.) 65; 13 W. R. 258 255
—— *v.* Monmouth (Town Clerk) (1885), 34 W. R. 64 145
Ballard *v.* Robins (1877), 3 C. P. D. 92; 2 Hop. & Colt. 384; 47 L. J. (C. P.) 50; 37 L. T. 436; 26 W. R. 80 224
Bane, *Re*, [1879] W. N. 200 249, 254
Bannon *v.* Hanrahan, [1900] 2 I. R. 455, C. A. 174
Barclay *v.* Parrott (1856), 1 C. B. (N. S.) 49; 26 L. J. (C. P.) 77; 3 Jur. (N. S.) 672; 5 W. R. 75 255
Barham *v.* Ipswich Dock Commissioners (1885), 54 L. T. 23 579
Barlow *v.* Mumford (1886), L. R. 2 C. P. 81; 36 L. J. (C. P.) 65; 15 L. T. 441; 12 Jur. (N. S.) 964; 15 W. R. 221 223
Barnett *v.* Hickmott, [1895] 1 Q. B. 691; 64 L. J. (Q. B.) 407; 72 L. T. 236; 59 J. P. 230; 43 W. R. 284; Fox & S. Reg. 412; 15 R. 256. 174, 255
———— *v.* Poplar Corporation, [1901] 2 K. B. 319; 70 L. J. (K. B.) 698; 84 L. T. 845; 49 W. R. 574; 17 T. L. R. 461 579
Barnstaple Case (1874), 2 O'M. & H. 105 270, 272, 444
Barr *v.* Chambers (1887), 22 L. R. Ir. 264, C. A. 210
Barrow *v.* Buckmaster (1852), 12 C. B. 664; 22 L J. (C. P.) 65; 17 Jur. 117; 2 Lut. Reg. Cas. 235 148
Barrow-in-Furness Borough Case (1886), 4 O'M. & H. 76 . . . 267, 302, 450
Bartlett *v.* Gibbs (1843), 5 Man. & G. 81; 7 Scott (N. R.) 609; Bar. & Arn. 98; 1 Lut. Reg. Cas. 73; 13 L. J. (C. P.) 40 224, 225, 227
Barton *v.* Ashley (1843), 2 C. B. 4; 1 Lut. Reg. Cas. 307; 15 L. J. (C. P.) 36; Bar. & Arn. 318 211
—— *v.* Birmingham Town Clerk (1878), 2 Hop. & Colt. 393 170
—— *v.* Longhorn (1848), 5 C. B. 92 162
Basingstoke School, *Re* (1877), 41 J. P. 118 124
Batcheller *v.* Tunbridge Wells Gas Co. (1901), 84 L. T. 765; 65 J. P. 680; 17 T. L. R. 765 564
Battersea Vestry *v.* County of London and Brush Principal Electric Lighting Co., Ltd., [1891] 1 Ch. 474; 68 L. J. (CH.) 238; 80 L. T. 231; 15 T. L. R. 175, C. A. 566
Baxter *v.* Brown (1845), 7 Man. & G. 198; *sub nom.* Baxter *v.* Newman, 8 Scott (N. R.), 1019; 14 L. J. (C. P.) 193; 9 Jur. 829; 1 Lut. Reg. Cas. 120, n. 147
—— *v.* Thomas (1903), *Times*, April 13th (C. A. November 13th) . . 39, 40
Bayley *v.* Edmunds, Byron and Marshall (1895), 11 T. L. R. 537, C. A. . . 299
Beal *v.* Exeter (Town Clerk) (1887), 20 Q. B. D. 300; Fox & S. Reg. 31; 57 L. J. (Q. B.) 128; 58 L. T. 407; 52 J. P. 501; 36 W. R. 507 . . . 255

PAGE

Beal *v.* Ford (1877), 3 C. P. D. 73; 47 L. J. (C. P.) 56; 2 Hop. & Colt. 374; 37 L. T. 408; 26 W. R. 146 255
—— *v.* Smith (1869), L. R. 4 C. P. 145; 38 L. J. (C. P.) 145; 19 L. T. 565; 17 W. R. 317 415, 424
Beamish *v.* Stoke Overseers (1851), 11 C. B. 29; 21 L. J. (C. P.) 9; 16 J. P. 150; 16 Jur. 597; 2 Lut. Reg. Cas. 189 152, 255
Beard's Trust, *Re*, Butlin *v.* Harris, [1904] 1 Ch. 270; 73 L. J. (CH.) 176; 90 L. T. 274; 68 J. P. 141; 52 W. R. 312; 20 T. L. R. 163; 2 L. G. R. 320 . . 25
Bearn *v.* Watson (1881), Colt. 268 148
Beatty *v.* Gillbanks (1882), 9 Q. B. D. 308; 51 L. J. (M. C.) 117; 47 L. T. 194; 46 J. P. 789; 31 W. R. 275; 15 Cox, C. C. 138 300
Beauchamp (Earl) *v.* Madresfield Overseers (1872), L. R. 8 C. P. 245; 42 L. J. (C. P.) 32; 27 L. T. 606; 21 W. R. 124; 2 Hop. & Colt. 41 . . 140, 183, 233
Bedford Case (1838), Falc. & Fitz. 429 441
———— (1779), 2 Doug. El. Cas. 110 144
———— (1833), Cockb. & Rowe, 79 140, 143
Bedfordshire Burgesses Case (1785), 2 Lud. E. C. 567 140
Beenlen *v.* Hockin (1846), 4 C. B. 19; 16 L. J. (C. P.) 49; 10 Jur. 1059; 1 Lut. Reg. Cas. 526 210, 214
Beeson *v.* Burton (1852), 12 C. B. 647; 22 L. J. (C. P.) 33; 2 Lut. Reg. Cas. 225 148, 255
Belfast Borough Petition (1869), 19 L. T. 574 424
———— Western Division Case (1886), 4 O'M. & H. 105 . . 293, 425, 442, 448, 535
—— Case (1838), Falc. & Fitz. 595 306
———— (1842), Bar. & Aust. 553 435
———— (1869), 1 O'M. & H. 281 287
Bell *v.* Graham, [1907] 2 K. B. 112; 76 L. J. (K. B.) 690; 97 L. T. 52; 71 J. P. 270; 23 T. L. R. 435; 5 L. G. R. 738 30
Bellamy *v.* Liverpool United Gas Light Co. (1904), 68 J. P. 540; 2 L. G. R. 1182 592
Belper School Board *v.* Bayley (1882), 9 Q. B. D. 259; 51 L. J. (M. C.) 91; 46 J. P. 438 57, 60
Bendish *v.* Lindsey (1708), 11 Mod. Rep. 194 306
Bendle *v.* Watson (1871), L. R. 7 C. P. 163; 41 L. J. (C. P.) 15; 25 L. T. 806; 20 W. R. 145; 1 Hop. & Colt. 591 225
Benesh *v.* Booth (1864), 18 C. B. (N. S.) 111; Hop. & Ph. 223; 34 L. J. (C. P.) 99; 11 L. T. 479; 13 W. R. 271 215
Benn, *Ex parte*, R. *v.* Kilmersdon Justices. *See* R. *v.* Kilmersdon Justices, *Ex parte* Benn.
Bennett *v.* Blain (1863), 15 C. B. (N. S.) 518; Hop. & Ph. 35; 33 L. J. (C. P.) 63; 9 L. T. 506; 10 Jur. (N. S.) 130; 12 W. R. 175 147
——— *v.* Brumfitt (1867), L. R. 3 C. P. 28; 37 L. J. (C. P.) 25; 17 L. T. 213; 16 W. R. 131; Hop. & Ph. 407 214
——— *v.* ———, Alderson's Case (1868), L. R. 4 C. P. 407; 38 L. J. (C. P.) 65; 19 L. T. 283; 17 W. R. 202; 1 Hop. & Colt. 80 . 213
——— *v.* ———, Ashcroft's Case (1868), L. R. 4 C. P. 399, n.; 1 Hop. & Colt. 48; 38 L. J. (C. P.) 72; 19 L. T. 452; 17 W. R. 142 . . 252
——— *v.* Evans (1892), 68 L. T. 765; Fox & S. Reg. 291; 2 R. 100 . . 175
Bennington Electoral Division Election, *Re*, *Ex parte* Hutchinson (1888), 5 T. L. R. 136 401, 477
Benthall *v.* Kilmorey (Earl) (1883), 25 Ch. D. 39; 53 L. J. (CH.) 528; 50 L. T. 137; 32 W. R. 69, C. A. 125
Beresford-Hope *v.* Sandhurst (Lady) (1889), 23 Q. B. D. 79; 58 L. J. (Q. B.) 316; 61 L. T. 150; 53 J. P. 805; 37 W. R. 548, C. A. 306, 437, 458, 512
Berkhamsted Grammar School, *Re*, [1908] 2 Ch. 25; 77 L. J. (CH.) 571; 99 L. T. 147; 72 J. P. 273; 24 T. L. R. 514; 6 L. G. R. 791 100, 105
Berry, *Ex parte* (1910), unreported 402, 403
——— *Ex parte*, *Re* Flack. *See* Flack, *Re*, *Ex parte* Berry.
Berwick-upon-Tweed Case (1880), 3 O'M. & H. 178 . . . 327, 328, 458, 473
———— (1860), Wolf. & B. 174 143
Beswick *v.* Aked (1846), 2 C. B. 156; Bar. & Arn. 687; Pig. & R. 294; 1 Lut. Reg. Cas. 422; 15 L. J. (C. P.) 145 153
——— *v.* Alker (1872), L. R. 8 C. P. 265; 2 Hop. & Colt. 36; 42 L. J. (C. P.) 26; 27 L. T. 422; 21 W. R. 72 152
——— *v.* Ashworth (1846), 2 C. B. 152; Bar. & Arn. 686; Pig. & R. 294; 1 Lut. Reg. Cas. 422; 15 L. J. (C. P.) 145 153
Bettesworth *v.* Allingham (1885), 16 Q. B. D. 44; 50 J. P. 55; 34 W. R. 296 . 296

PAGE
Betton's Charity, *Re*, [1908] 1 Ch. 205; 77 L. J. (CH.) 193; 98 L. T. 35; 72 J. P. 105; 25 T. L. R. 143; 6 L. G. R. 638 13
Beverley Case (1869), 1 O'M. & H. 143. 280, 288, 423, 425
Bewdley Case (1869), 1 O'M. & H. 16 . . . 268, 270, 271, 272, 425, 447, 449, 462, 473
———— (1880), 3 O'M. & H. 143, 149 272
Birch *v.* Edwards (1847), 5 C. B. 45; 17 L. J. (C. P.) 32; 12 Jur. 18; 2 Lut. Reg. Cas. 37 215, 255
Birkbeck *v.* Bullard, *Re* Norwich Election Petition. *See* Norwich Election Petition, *Re*, Birkbeck *v.* Bullard.
Birks *v.* Allison (1862), 13 C. B. (N. S.) 12; 32 L. J. (C. P.) 51; 7 L. T. 786; 9 Jur. (N. S.) 693; 11 W. R. 90 223, 226
Birley, *Ex parte*, *Re* Lingfield Division Election. *See* Lingfield Division Election, *Re*, *Ex parte* Birley.
Bishop *v.* Helps (1845), 2 C. B. 45; 15 L. J. (C. P.) 43; Bar. & Arn. 572; 1 Lut. Reg. Cas. 353 211, 215
——— *v.* Smedley (1846), 2 C. B. 90; 15 L. J. (C. P.) 73; 10 Jur. 269; 1 Lut. Reg. Cas. 384 172
Blackburn Case (1869), 1 O'M. & H. 198 270, 271, 273, 453
Blain *v.* Pilkington (1864), 18 C. B. (N. S.) 6; Hop. & Ph. 92; 34 L. J. (C. P.) 55; 11 L. T. 452; 10 Jur. (N. S.) 1237; 13 W. R. 269 232
Blake *v.* London Corporation (1887), 19 Q. B. D. 79; 56 L. J. (Q. B.) 424; 36 W. R. 791, C. A. 97
Bland *v.* Buchanan, [1901] 2 K. B. 75; 70 L. J. (K. B.) 466; 84 L. T. 390; 65 J. P. 404; 49 W. R. 601; 17 T. L. R. 348 352, 353
Blazer Fire Lighter, Ltd., *Re*, [1895] 1 Ch. 402; 64 L. J. (CH.) 161; 71 L. T. 665; 43 W. R. 364; 13 R. 52 599
Blencowe *v.* Northamptonshire County Council, [1907] 1 Ch. 504; 76 L. J. (CH.) 276; 96 L. T. 385; 71 J. P. 258; 23 T. L. R. 319; 5 L. G. R. 551 . . . 37
Bletchingley Case (1623), Glanville's Rep., p. 29 532
Blyth's Case (1705), 2 Doug. 177 532
Boast *v.* Firth (1868), L. R. 4 C. P. 1; 38 L. J. (C. P.) 1; 19 L. T. 264; 17 W. R. 29 123
Bodmin Case (1869), 1 O'M. & H. 117 272, 282, 425, 447
——— Division Case (1906), 5 O'M. & H. 225 263, 266, 272, 290, 473
Body *v.* Halse, [1892] 1 Q. B. 203; 61 L. J. (Q. B.) 57; 66 L. T. 499; 40 W. R. 206; Fox & S. Reg. 240 208, 229
Bollen *v.* Southall (1884), 15 Q. B. D. 461; 54 L. J. (Q. B.) 589; 49 J. P. 119; 34 W. R. 45; Colt. 368 230
Bolton *v.* Jeffes (1718), 2 Bro. Parl. Cas. 463 138
——— Case (1874), 2 O'M. & H. 138 272, 321, 452, 472
Bond *v.* St. George, Hanover Square, Overseers (1870), L. R. 6 C. P. 312; 40 L. J. (C. P.) 47; 23 L. T. 494; 19 W. R. 101; 1 Hop. & Colt. 427 177, 187, 274
Boon *v.* Howard (1874), L. R. 9 C. P. 277; 2 Hop. & Colt. 208; 43 L. J. (C. P.) 115; 30 L. T. 382; 22 W. R. 535 170
Boston Borough Case (1880), 3 O'M. & H. 141 288, 452
——— Case (1803), 1 Peck. 434 283
———— (1874), 2 O'M. & H. 161 266, 270
Bourne *v.* Marylebone Borough Council (1908), 72 J. P. 129; [1908] W. N. 52; reversed 72 J. P. 306; 24 T. L. R. 613; 6 L. G. R. 1141; [1909] W. N. 14, C. A. 592
Bowden *v.* Besley (1888), 21 Q. B. D. 309; 57 L. J. (Q. B.) 473; 59 L. T. 219; 52 J. P. 536; 36 W. R. 889 274, 275
Bowditch *v.* Wakefield Local Board (1871), L. R. 6 Q. B. 567; 40 L. J. (M. C.) 214; 25 L. T. 88 119
Bowers *v.* Young (1904), 48 Sol. Jo. 733 126
Boyce *v.* White (1905), 92 L. T. 240; 53 W. R. 430; 21 T. L. R. 244; 3 L. G. R. 787 276
Bradford Case (1869), 1 O'M. & H. 30 279, 280, 429, 441, 449, 456
———— Election Petition (1869), 19 L. T. 661 423
Bradley *v.* Baylis (1881), 8 Q. B. D. 195; 51 L. J. (Q. B.) 183; 46 L. T. 253; 45 J. P. 847; 30 W. R. 823; Colt. 163, C. A. . . . 168, 169, 170, 175, 252
Brecon (1871), *Times*, April 22nd 412
——— Borough Case (1869) 1 O'M. & H. 212 424
——— Case (1871), 2 O'M. & H. 44 285
Bremridge *v.* Campbell (1831), 5 C. & P. 186 288
Brentwood Case, *Ex parte* Montgomery (1889), 5 T. L. R. 198 401
Bridges *v.* Miller (1887), 20 Q. B. D. 287; 57 L. J. (Q. B.) 125; 58 L. T. 405; 52 J. P. 518; 36 W. R. 509; Fox & S. Reg. 47 230

PAGE
Bridgewater *v.* Durant (1861), 11 C. B. (N. S.) 7; K. & G. 377; 31 L. J. (C. P.) 46; 5 L. T. 491; 8 Jur. (N. S.) 590; 10 W. R. 171 . . . 166
Bridgewater Case (1869), 1 O'M. & H. 112 270, 279, 446, 447, 449
———, Tucker's Case (1803), 1 Peck. 108 140
Bridport Election Petition, Hounsell *v.* Suttill (1887), 19 Q. B. D. 498; 56 L. J. (Q. B.) 502; 57 L. T. 102; 51 J. P. 44; 36 W. R. 127 354, 355
Bright *v.* Devenish (1866), L. R. 2 C. P. 102; 36 L. J. (C. P.) 71; 15 L. T. 471; 12 Jur. (N. S.) 1019; 15 W. R. 225 212
Bristol Case (1870), 2 O'M. & H. 29; 22 L. T. 487 287, 423, 425, 447, 459
——— Gas Co. and Bristol Tramways and Carriage Co., Ltd., *Re* [1909] 2 K. B. 297; 78 L. J. (K. B.) 772; 100 L. T. 909; 73 J. P. 323; 7 L. G. R. 693, C. A. 584
Bristol (Marquis) *v.* Beck (1907), 96 L. T. 55; 71 J. P. 99; 23 T. L. R. 224 233, 314
Bristol Tramways and Carriage Co. *v.* National Telephone Co., [1899] 2 Ch. 282; 68 L. J. (CH.) 566; 80 L. T. 836; 63 J. P. 583; 15 T. L. R. 430 . . . 571
British Electric Traction Co. *v.* Inland Revenue Commissioners, [1902] 1 K. B. 441; 71 L. J. (K. B.) 92; 85 L. T. 663; 66 J. P. 83; 50 W. R. 280; 18 T. L. R. 105, C. A. 616
Britt *v.* Robinson (1870), L. R. 5 C. P. 503; 39 L. J. (C. P.) 265; 23 L. T. 188; 18 W. R. 866 285
Brittain *v.* Ritchie (1899), 43 Sol. Jo. 532 373, 538
——— *v.* Whiteham (1900), *Times*, March 30th 374, 463, 539
Broad *v.* Fowler (1868), 19 L. T. 498 419
Broadbent, *Ex parte*, R. *v.* Morris. *See* R. *v.* Morris, *Ex parte* Broadbent.
Brocklehurst *v.* Manchester, Bury, Rochdale, and Oldham Steam Tramways Co. (1886), 17 Q. B. D. 118; 55 L. T. 406; 51 J. P. 55; 34 W. R. 568 . 565
Brogie *v.* M'Gowan, [1907] S. C. 391 160
Brooks, *Ex parte*, *Re* Speight. *See* Speight, *Re*, *Ex parte* Brooks.
——— *v.* Baker, [1906] 1 K. B. 11; 75 L. J. (K. B.) 41; 94 L. T. 97; 70 J. P. 24; 54 W. R. 195; 22 T. L. R. 36; 4 L. G. R. 111; 1 Smith, Reg. Cas. 465 153, 161, 162
Brown *v.* Benn (1889), 53 J. P. 167 276, 344
——— *v.* Martin (1885), [1897] W. N. 121 175
——— *v.* Tamplin (1872), L. R. 8 C. P. 241; 42 L. J. (C. P.) 37; 27 L. T. 610; 21 W. R. 125; 2 Hop. & Colt. 17 251
——— *v.* Tombs, [1891] 1 Q. B. 253; 60 L. J. (Q. B.) 38; 64 L. T. 114; 55 J. P. 359; Fox & S. Reg. 196 207
Brumfitt *v.* Bremner (1860), K. & G. 352; 9 C. B. (N. S.) 1; 30 L. J. (C. P.) 33; 3 L. T. 375; 7 Jur. (N. S.) 371; 9 W. R. 144 244
——— *v.* Roberts (1870), L. R. 5 C. P. 224; 1 Hop. & Colt. 387; 39 L. J. (C. P.) 95; 22 L. T. 301; 18 W. R. 678 147, 250, 251, 252
Buckley *v.* Wrigley (1871), L. R. 7 C. P. 185; 1 Hop. & Colt. 661; 25 L. T. 835 151
Buckrose Division Case (1886), 4 O'M & H. 110 . 269, 297, 303, 304, 318, 328, 406, 413, 443, 458, 459, 473
Budge *v.* Andrews (1878), 3 C. P. D. 510; 47 L. J. (C. P.) 586; 39 L. T. 166 . 487
Bulawayo Municipality *v.* Bulawayo Waterworks Co., Ltd., [1908] A. C. 241; 77 L. J. (P. C.) 70; 98 L. T. 600 594
Bulmer *v.* Norris (1860), 9 C. B. (N. S.) 19; K. & G. 321; 30 L. J. (C. P.) 25; 3 L. T. 470; 7 Jur. (N. S.) 342; 9 W. R. 122 147, 314
Bunting's Case Chorlton *v.* Johnson. *See* Chorlton *v.* Johnson, Bunting's Case.
Burgess *v.* Morris (1897) 77 L. T. 97; 61 J. P. 553 613
Burgoyne *v.* Collins (1882), 8 Q. B. D. 450; 51 L. J. (Q. B.) 335; 46 J. P. 390; 30 W. R. 923 274, 384
Burns *v.* Cassells (1891) 19 R. (Ct. of Sess.) 287 207
——— *v.* Maclain (1894), 29 I. L. T. 20, C. A. 239, 249
Burroughs, Wellcome & Co.'s Trade Marks, *Re* (1904), 22 R. P. C. 164 . . 477
Burton *v.* Aston Overseers (1849), 8 C. B. 7; 19 L. J. (C. P.) 28 152
——— *v.* Blake (1852), 11 C. B. 47 249
——— *v.* Brooks (1852), 11 C. B. 41; 2 Lut. Reg. Cas. 197; 21 L. J. (C. P.) 7; 16 Jur. 569 148, 249
——— *v.* Gery (1847), 5 C. B. 7; 17 L. J. (C. P.) 66; 11 Jur. 948; 2 Lut. Reg. Cas. 4 205, 224
——— *v.* Langham (1848), 5 C. B. 92; 17 L. J. (C. P.) 253; 12 Jur. 631; 2 Lut. Reg. Cas. 78 156
Bury *v.* Cherryholm (1876), 1 Ex. D. 457; 35 L. T. 403 61
Bury Borough Case (1859), Wolf. & B. 40 449

PAGE
Bushell *v.* Eastes (1861), 11 C. B. (N. S.) 106; K. & G. 484; 31 L. J. (C. P.) 44; 5 L. T. 580; 8 Jur. (N. S.) 645; 10 W. R. 153 150
Busher *v.* Thompson (1846), 4 C. B. 48; 1 Lut. Reg. Cas. 551; 16 L. J. (C. P.) 57; 11 Jur. 45 147
Butlin *v.* Harris, *Re* Beard's Trust. *See* Beard's Trust, *Re*, Butlin *v.* Harris.
Butterwick Free School, *Re* (1851), 15 Jur. 913 126
Buxton *v.* Garfit (1880), 44 L. T. 287 287
Buxton School, *Re*, *Ex parte* Holland (1847), 11 Jur. 581 126
Byrch, *Ex parte*, Newbury Case. *See* Newbury Case, *Ex parte* Byrch.

C.

CADE and Burrow *v.* Marsh, Stamford Case. *See* Stamford Case, Cade and Burrow *v.* Marsh.
Caldicott *v.* Corrupt Practices Commissioners (1907), 21 Cox, C. C. 404 285, 286, 469, 470
——— *Ex parte* (1907), 51 Sol. Jo. 593 401
Calver *v.* Roberts (1871), 1 Hop. & Colt. 616; 25 L. T. 751; 20 W. R. 147 . 211
Cambridge Case (1857), 1 Wolf & D. 28 287
——— *Ex parte* Hawkins (1899), 44 Sol. Jo. 102 402
Campbell *v.* Chambers, Harris' Case (1887), 22 L. R. Ir. 460, C. A. . . . 229
——— *v.* ——— Kempston's Case (1887), 22 L. R. Ir. 258, C. A. . . 158
——— *v.* Maund (1836), 5 Ad. & El. 865; 1 Nev. & P. (K. B.) 558; 2 Har. & W. 457 323
Cannon Brewery Co. *v.* Gas Light and Coke Co., [1904] A. C. 331; 73 L. J. (K. B.) 747; 91 L. T. 110; 68 J. P. 461; 52 W. R. 657; 20 T. L. R. 543; 2 L. G. R. 949 599
Canterbury Borough Case (1880), 3 O'M. & H. 103 281, 444, 473
——— Case (1853), 2 Pow. R. & D. 14 281, 282
——— (1855), Kn. & Omb. 321 144
Capell *v.* Aston Overseers (1849), 8 C. B. 1; 2 Lut. Reg. Cas. 143 . . 152, 255
Cardiff Corporation, *Ex parte* (1904), 20 T. L. R. 317, C. A. 8, 19
——— Election, *Re* (1661), Journals of the House of Commons, June 15th . . 257
Carlin's Case, Clarke *v.* Buchanan. *See* Clarke *v.* Buchanan, Carlin's Case.
Carrickfergus Borough Case (1869), O'M. & H. 264 425, 472, 474
——— Case (1880), 3 O'M. & H. 90 284, 287, 473, 474
Carroll *v.* Beggs (1864), 15 I. C. L. R. 370 205
——— *v.* Fisher (1864), 15 I. C. L. R. 369 248
Carter *v.* Mills (1874), L. R. 9 C. P. 117; 43 L. J. (C. P.) 111; 22 W. R. 318...422, 435
Cartwright *v.* Shrewsbury Town Clerk, [1909] 2 K. B. 169; 78 L. J. (K. B.) 609; 100 L. T. 703; 73 J. P. 310; 25 T. L. R. 421; 7 L. G. R. 559; 2 Smith, Reg. Cas. 163 204, 231
Cashel Case (1869), 1 O'M. & H. 286 272, 282, 283, 288, 437, 440
Catharine *v.* Surry (undated) 140
Caunter *v.* Addams (1863), 15 C. B. (N. S.) 512; Hop. & Ph. 50; 33 L. J. (C. P.) 68; 9 L. T. 391; 9 Jur. (N. S.) 1295; 12 W. R. 1105 171, 194
Cavendish *v.* Strutt, [1904] 1 Ch. 524; 73 L. J. (CH.) 247; 90 L. T. 500; 52 W. R. 333; 20 T. L. R. 99 477, 521
Cawse *v.* Nottingham Lunatic Hospital, [1891] 1 Q. B. 585; 60 L. J. (Q. B.) 485; 65 L. T. 155; 55 J. P. 582; 39 W. R. 461 93
Chaplin (W. H.) & Co., Ltd. *v.* Westminster Corporation, [1901] 2 Ch. 329; 70 L. J. (CH.) 679; 85 L. T. 88; 65 J. P. 661; 49 W. R. 586; 17 T. L. R. 576 642, 643
Charing Cross and Strand Electricity Supply Corporation *v.* Woodthorpe (1903), 88 L. T. 772; 67 J. P. 286; 67 J. P. 437; 52 W. R. 158; 1 L. G. R. 551 . 577
Charitable Gifts for Prisoners, *Re*, *Ex parte* Christ's Hospital (Governors) (1872), 8 Ch. App. 199; 42 L. J. (CH.) 391; 28 L. T. 84; 21 W. R. 213 . . . 116
Charlton *v.* Morris (1894), [1897] W. N. 107; [1895] 2 I. R. 541 . . . 164
Cheltenham (1869), Printed Judgments, 51 457
——— Case (2nd Case) (1848), 1 Pow. R. & D. 224 289
——— (1869), 1 O'M. & H. 62 283, 286, 425, 441, 448
——— (1880), 3 O'M. & H. 86 273, 436, 444, 448
Chepstow Electric Light and Power Co., Ltd. *v.* Chepstow Gas and Coke Consumers' Co., Ltd., [1905] 1 K. B. 198; 74 L. J. (K. B.) 28; 92 L. T. 27; 69 J. P. 72; 21 T. L. R. 35; 3 L. G. R. 49 581
Chester (Dean and Chapter) *v.* Chester (Bishop) (1902), 87 L. T. 618; 12 T. L. R. 131 104, 108
——— (1880), not reported 438

PAGE
Chester Borough Case (1880), 3 O'M. & H. 148 473
Chesterfield Case, Bayley *v.* Edmunds (1895), 11 T. L. R. 537, C. A. 299
Chichester Corporation *v.* Foster, [1906] 1 K. B. 167; 75 L. J. (K. B.) 33; 93 L. T. 750; 70 J. P. 73; 54 W. R. 199; 22 T. L. R. 18; 4 L. G. R. 205 . 584
Chilcott *v.* Bullen (1881), Colt. 282; 46 L. T. 63 152
Childs *v.* Cox (1887), 20 Q. B. D. 290; 58 L. T. 338; 36 W. R. 505; Fox & S. Reg. 84 215, 216, 255
Ching *v.* Surrey County Council, [1909] 2 K. B. 762; 78 L. J. (K. B.) 927; 100 L. T. 940; 73 J. P. 441; 25 T. L. R. 702; 7 L. G. R. 845 33
—— *v.* ——, [1910] 1 K. B. 736, C. A. 20, 34
Chipping Sodbury Free Grammar School, *Re* (1834), 8 L. J. (O. S.) (CH.) 13...125, 126
Chorlton *v.* Johnson, Bunting's Case (1868), L. R. 4 C. P. 426; 1 Hop. & Colt. 49; 38 L. J. (C. P.) 37; 19 L. T. 560; 17 W. R. 141 . 155
—— *v.* ——, Ree's Case (1868), L. R. 4 C. P. 400; 38 L. J. (C. P.) 39; 19 L. T. 530; 17 W. R. 119; 1 Hop. & Colt. 54 210
—— *v.* Kessler (1868), L. R. 4 C. P. 397; 1 Hop. & Colt. 42 140
—— *v.* Lings (1868), L. R. 4 C. P. 374; 38 L. J. (C. P.) 25; 19 L. T. 534; 17 W. R. 284; 1 Hop. & Colt. 1 140
—— *v.* Stretford Overseers (1871), L. R. 7 C. P. 198; 41 L. J. (C. P.) 37; 1 Hop. & Colt. 712; 25 L. T. 810; 20 W. R. 236 155
—— *v.* Tonge Overseers (1871), L. R. 7 C. P. 178; 41 L. J. (C. P.) 33; 26 L. T. 25; 20 W. R. 338; 1 Hop. & Colt. 632 212
Christ's Hospital (Governors), *Ex parte*, *Re* Charitable Gifts for Prisoners. *See* Charitable Gifts for Prisoners, *Re*, *Ex parte* Christ's Hospital (Governors).
——, *Re* (1889), 15 App. Cas. 172; 59 L. J. (P. C.) 52; 62 L. T. 10; 38 W. R. 758 102, 103, 106, 107, 110
Christchurch Borough Case (1896), 5 O'M. & H. 147 432
Cirencester Case (1893), Day, 3; 4 O'M. & H. 194 . 317, 327, 328, 417, 423, 424, 427, 429, 455, 456, 458, 473
Clare County Case (1860), Wolf. & B. 138 453
—— Eastern Division Case (1892), 4 O'M. & H. 162 . 276, 302, 307, 313, 418, 476
Claridge *v.* Evelyn (1821), 5 B. & Ald. 81 306
Clark, *Ex parte* (1885), 52 L. T. 260 399, 400
—— *v.* Bury St. Edmunds Overseers (1856), 1 C. B. (N. S.) 23 172
—— *v.* London School Board (1874), 9 Ch. App. 120; 43 L. J. (CH.) 421; 29 L. T. 903; 22 W. R. 354 27
Clarke *v.* Beaton (1847), 5 C. B. 76 251
—— *v.* Buchanan, Carlin's Case (1886), [1898] W. N. 109; 20 L. R. Ir. 244, C. A. 172
—— *v.* Wallond (1883), 52 L. J. (Q. B.) 321; 48 L. T. 762; 47 J. P. 551; 31 W. R. 551. 413, 421, 424
Clarke's Settlement, *Re*, [1902] 2 Ch. 327; 71 L. J. (CH.) 593; 86 L. T. 653; 50 W. R. 585; 18 T. L. R. 610 640
Clay *v.* Crofts (1851), 20 L. J. (EX.) 361 122
Cleary *v.* Booth, [1893] 1 Q. B. 465; 62 L. J. (M. C.) 87; 68 L. T. 349; 57 J. P. 375; 41 W. R. 391; 17 Cox, C. C. 611; 5 R. 263 124
Clegg, Parkinson & Co. *v.* Earby Gas Co., [1896] 1 Q. B. 592; 65 L. J. (Q. B.) 339; 44 W. R. 606 592
Clements *v.* May (1836), 7 C. & P. 678 122
Clements *v.* Williams (1837), 8 C. & P. 58 123
Clementson *v.* Mason (1875), L. R. 10 C. P. 209; 44 L. J. (C. P.) 171; 32 L. T. 325; 23 W. R. 620 316, 318, 321, 326
Clitheroe Borough, 2nd Case (1853), 2 Pow. R. & D. 276 307
Clutterbuck *v.* Taylor, [1896] 1 Q. B. 395; 65 L. J. (Q. B.) 314; 74 L. T. 177; 60 J. P. 278; 44 W. R. 531; 1 Smith, Reg. Cas. 59, C. A. 174
Cobbett *v.* Hibbert (1868), 19 L. T. 501 421
Cockermouth Case (1853), Report of Select Committee, Minutes of Evidence, p. 100 449
—— (1853), 2 Pow. R. & D. 164 288
—— Division Case (1901), 5 O'M. & H. 155 299, 304, 335
Cockerton *v.* London School Board, [1898] 2 Q. B. 447; 67 L. J. (Q. B.) 874; 79 L. T. 50; 46 W. R. 658; 14 T. L. R. 501, C. A. 127
Colchester Case (1789), 1 Peck. 507 144
—— Grammar School, *Re*, [1898] A. C. 477; 67 L. J. (P. C.) 86; 78 L. T. 509; 14 T. L. R. 409 110
Cole, *Ex parte*, R. *v.* Miles. *See* R. *v.* Miles, *Ex parte* Cole.

PAGE
Collier *v.* King (1861), 11 C. B. (N. S.) 14; K. & G. 385; 31 L. J. (C. P.) 80; 5 L. T. 674; 8 Jur. (N. S.) 676; 10 W. R. 131 148
——— *v.* ——— (1862), 11 C. B. (N. S.) 478 255
Collins *v.* Price (1828), 5 Bing. 132; 2 Moo. & P. 233; 6 L. J. (O. S.) (C. P.) 244 123
——— *v.* ——— (1880), 5 C. P. D. 544 438
——— *v.* Thomas (1852), 12 C. B. 639 255
Colquhoun *v.* Young (1897), 25 R. (Ct. of Sess.) 101 173
Colvill *v.* Lewis (1846), 2 C. B. 60; 1 Lut. Reg. Cas. 380 215, 253
——— *v.* Wood (1846), 2 C. B. 210; 15 L. J. (C. P.) 160; 10 Jur. 336; 1 Lut. Reg. Cas. 483 161
Colwell *v.* St. Pancras Borough Council, [1904] 1 Ch. 707; 73 L. J. (CH.) 275; 90 L. T. 153; 68 J. P. 286; 52 W. R. 523; 20 T. L. R. 236; 2 L. G. R. 518 564
Commercial Gas Co. *v.* Poplar Borough Council (1906), 94 L. T. 222; 70 J. P. 178; 4 L. G. R. 267 575
Connolly *v.* Riddall (1888), [1897] W. N. 103; 24 L. R. Ir. 127 164
Coogan *v.* Luckett (1846), 2 C. B. 182; 15 L. J. (C. P.) 159; 1 Lut. Reg. Cas. 447; 10 Jur. 141; Bar. & Arn. 716 161, 254
Cook *v.* Humber (1861), 11 C. B. (N. S.) 733; K. & G. 413; 31 L. J. (C. P.) 73; 5 L. T. 838; 8 Jur. (N. S.) 698; 10 W. R. 427 159, 161, 185
—— *v.* Plashett (1882), 46 L. T. 383; 47 J. P. 265 60
Cooke *v.* Butler (1872), L. R. 8 C. P. 256; 42 L. J. (C. P.) 25; 2 Hop. & Colt. 22; 27 L. T. 548; 21 W. R. 73 156
Cooper *v.* Ashfield (1858), 5 C. B. (N. S.) 16; K. & G. 200; 28 L. J. (C. P.) 35; 5 Jur. (N. S.) 293. 224, 226
——— *v.* Harris (1845), 7 Man. & G. 97; 8 Scott (N. R.), 921; 14 L. J. (C. P.) 72 253
——— *v.* Ogden, *Re* Oldham Municipal Election. *See* Oldham Municipal Election, *Re*, Cooper *v.* Ogden.
——— *v.* Slade (1858), 6 H. L. Cas. 746; 27 L. J. (Q. B.) 449; 4 Jur. (N. S.) 791; 6 W. R. 461 270, 288, 539
Copland *v.* Bartlett (1848), 6 C. B. 18; 18 L. J. (C. P.) 50; 13 Jur. 127; 2 Lut. Reg. Cas. 102 152
Corcoran *v.* Barnard (1857), 7 I. C. L. R. 374 162
Cork Case (1835), Kn. & Omb. 274 306
Cormack *v.* Wick and Pulteneytown School Board (1889), 16 R. (Ct. of Sess.) 812 33
Cotton *v.* Prall, Akenhead's Case (1866), L. R. 2 C. P. 86; 36 L. J. (C. P.) 67; 15 L. T. 468; 12 Jur. (N. S.) 1018; 15 W. R. 223; Hop. & Ph. 335 214
County Councillors, Election of, *Re* (1889), 5 T. L. R. 206 506, 508
County of Durham Electric Power Distribution Co. *v.* Inland Revenue Commissioners, [1909] 2 K. B. 604; 78 L. J. (K. B.) 1158; 101 L. T. 51; 73 J. P. 425; 25 T. L. R. 672, C. A. 616
County of London Electric Supply Co., Ltd. *v.* Perkins (1908), 98 L. T. 870; 72 J. P. 133; 24 T. L. R. 327; 52 Sol. Jo. 281; 6 L. G. R. 344 577
Coventry Borough Case (1869), 1 O'M. & H. 197 293, 425
——— Case (1833), Per. & Kn. 335 281
——— (1869), 1 O'M. & H. 97, 105 . 270, 282, 283, 285, 293, 449, 452, 473
——— City (1803), 1 Peck. 93 453
——— Petition (1869), 19 L. T. 742 430
Cowen *v.* Kingston-upon-Hull Town Clerk, [1897] 1 Q. B. 273; 66 L. J. (Q. B.) 185; 75 L. T. 593; 61 J. P. 356; 45 W. R. 413; 1 Smith, Reg. Cas. 96...144, 145
Cox *v.* Ambrose (1890), 7 T. L. R. 59 306
—— *v.* Davies, [1898] 2 Q. B. 202; 67 L. J. (Q. B.) 925; 14 T. L. R. 427 275, 378, 436
Crawford *v.* City of London Electric Lighting Co. (1898), 67 L. J. (Q. B.) 942; 78 L. T. 841; 47 W. R. 45 607
Cremer *v.* Lowles, [1896] 1 Q. B. 504; 65 L. J. (Q. B.) 289; 74 L. T. 42; 60 J. P. 100; 44 W. R. 629, C. A. 413, 415, 425
Cressy *v.* South Metropolitan Gas Co. (1906), 94 L. T. 790; 70 J. P. 405; 4 L. G. R. 1049 579
Crisp *v.* Thomas (1890), 63 L. T. 756; 55 J. P. 261, C. A. 39
Crocker *v.* Plymouth Corporation, [1906] 1 K. B. 494; 75 L. J. (K. B.) 375; 94 L. T. 734; 70 J. P. 204; 54 W. R. 391; 22 T. L. R. 336; 4 L. G. R. 571 . 36
Crosbie (Adolphe), Ltd., *Re*, Johnson and Hughes *v.* Adolphe Crosbie, Ltd. (1909), 74 J. P. 25 599
Crossley (Sir S.), *Ex parte*, Lowestoft Division Case. *See* Lowestoft Division Case, *Ex parte* Crossley (Sir S.).
Crouch *v.* Great Northern Rail. Co. (1854), 9 Exch. 556; 23 L. J. (EX.) 148; 7 Ry. & Can. Cas. 787 589
Croucher *v.* Browne (1846), 2 C. B. 97; 15 L. J. (C. P.) 74; 1 Lut. Reg. Cas. 388 181

PAGE
Crowther *v.* Bradney (1863), 15 C. B. (N. S.) 536; Hop. & Ph. 63; 33 L. J. (C. P.) 70; 9 L. T. 444; 12 W. R. 176 211, 213
Crozier *v.* Rylands (1869), 19 L. T. 572 424
Crystal Palace Gas Co. *v.* Idris & Co. (1900), 82 L. T. 200; 64 J. P. 452; 16 T. L. R. 180 613
Cull *v.* Austin (1872), L. R. 7 C. P. 227; 41 L. J. (C. P.) 153; 26 L. T. 767; 20 W. R. 863; 1 Hop. & Colt. 741 172
Cullen *v.* Morris (1819), 2 Stark. 587 312, 537
——— *v.* Patterson (1885), 18 L. R. Ir. 274, C. A. 175, 229
Cuming *v.* Toms (1844), 7 Man. & G. 29; 8 Scott (N. R.), 827; 14 L. J. (C. P.) 54; 8 Jur. 1052; 1 Lut. Reg. Cas. 151 215
Curtis *v.* Blight (1861), 11 C. B. (N. S.), 95 211

D.

DAKING *v.* Fraser (1885), 16 Q. B. D. 252; 55 L. J. Q. B. 11; 34 W. R. 366, Colt. 455 209, 226
Daniel *v.* Camplin (1845), 7 Man. & G. 167; 8 Scott (N. R.), 999; 14 L. J. (C. P.) 121; 9 Jur. 403; Bar. & Arn. 425; 1 Lut. Reg. Cas. 264 . 224, 227
——— *v.* Coulsting (1845), 7 Man. & G. 122; 8 Scott (N. R.), 949; 14 L. J. (C. P.) 70; 9 Jur. 258; 1 Lut. Reg. Cas. 230 161, 185, 224
Daniels *v.* Allard (1887), Fox & S. Reg. 70 145
Darlington, *Ex parte*, *Re* Dunchurch Division Election. *See* Dunchurch Division Election, *Re*, *Ex parte* Darlington.
Darlington Union Guardians, *Re* (1875), 32 L. T. 320 84
Darnell *v.* Tratt (1825), 2 C. & P. 82 122
Darwen Division of Lancashire Election, *Re* (1885), 80 L. T. Jo. 153 . . . 428
Dashwood *v.* Ayles (1885), 16 Q. B. D. 295; 55 L. J. (Q. B.) 8; 53 L. T. 58; 49 J. P. 776; 50 J. P. 132; 34 W. R. 53, C. A. 225
Dauber *v.* Barnes (1862), 31 L. J. (Q. B.) 302; 6 L. T. 333; 8 Jur. (N. S.) 512; 10 W. R. 605 441
Daugars *v.* Rivaz (1860), 28 Beav. 233; 29 L. J. (CH.) 685; 6 Jur. (N. S.) 854; 8 W. R. 225 125
Davies *v.* Hopkins (1857), 3 C. B. (N. S.) 376; 27 L. J. (C. P.) 6; 4 Jur. (N. S.) 690; 6 W. R. 68 175, 205, 206, 227, 228, 229
——— *v.* Kensington (Lord) (1874), L. R. 9 C. P. 720; 43 L. J. (C. P.) 370; 30 L. T. 610; 22 W. R. 707 276, 418, 476
Davis *v.* Waddington (1844), 7 Man. & G. 37; 8 Scott (N. R.), 807; 14 L. J. (C. P.) 45; 8 Jur. 1142; 1 Lut. Reg. Cas. 159 149
Dawson *v.* Robins (1876), 2 C. P. 38; 46 L. J. (C. P.) 62; 2 Hop. & Colt. 317; 35 L. T. 599; 25 W. R. 212 148
Dean *v.* Bennett (1870), 6 Ch. App. 489; 40 L. J. (CH.) 452; 24 L. T. 169; 19 W. R. 363 126
De Boinville *v.* Arnold (1855), 1 C. B. (N. S.) 3; 26 L. J. (C. P.) 65; 3 Jur. (N. S.) 642; 5 W. R. 21 255
Demerara Electric Co. *v.* White, [1907] A. C. 330; 76 L. J. (P. C.) 54; 96 L. T. 752 564
Denaby Main Colliery Co. *v.* Manchester, Sheffield and Lincolnshire Rail. Co. (1885), 11 App. Cas. 97; 55 L. J. (Q. B.) 181; 54 L. T. 1; 50 J. P. 340; 6 Ry. & Can. Tr. Cas. 133 589
Denman *v.* Winstanley (1887), 4 T. L. R. 127 123
Devine's Case, Holland *v.* Chambers. *See* Holland *v.* Chambers, Devine's Case.
Devonport Election Case, *Re* (1886), 2 T. L. R. 345 304, 433
De Wette, *Ex parte*, Hampton Division. *See* Hampton Division, *Ex parte* De Wette.
Dickeson *v.* Hilliard (1874), L. R. 9 Exch. 79; 43 L. J. (EX.) 37; 30 L. T. 196; 22 W. R. 372 306
Dinevor (Lord), *Ex parte*, *Re* Llandovery Division Election. *See* Llandovery Division Election, *Re*, *Ex parte* Dinevor (Lord).
Dipstale's Case (1868), L. R. 4 Q. B. 114; 19 L. T. 432. 184
Dix *v.* Kent (1890), Fox & S. Reg. 186; 63 L. T. 641; 55 J. P. 213; 39 W. R. 173 145
Dobson *v.* Fussy (1831), 7 Bing. 305; 9 L. J. (O. S.) (C. P.) 72; 5 Moo. & P. 112 376
——— *v.* Jones (1844), 5 Man & G. 112; 8 Scott (N. R.), 80; 1 Lut. Reg. Cas. 105; 13 L. J. (C. P.) 126 161, 162, 168

PAGE

Dodds *v.* Thompson (1865), L. R. 1 C. P. 133 ; Har. & Ruth. 319 ; Hop. & Ph. 285 ; 35 L. J. (C. P.) 97 ; 12 Jur. (N. S.) 625 ; 14 W. R. 476 148
Doe d. Childe *v.* Willis (1850), 5 Exch. 894 ; 20 L. J. (EX.) 85 126
——— Coyle *v.* Cole (1834), 6 C. & P. 359 126
——— Thanet (Earl) *v.* Gartham (1823), 8 Moore (C. P.), 368 ; 1 Bing. 357 ; 2 L. J.(O. S.) (C. P.) 17 126, 127
Donnelly *v.* Graham (1888), [1897] W. N. 103 164
Douglas *v.* Smith, [1907] 1 K. B. 126 ; affirmed [1907] 2 K. B. 568 ; 76 L. J. (K. B.) 969 ; 96 L. T. 826 ; 71 J. P. 433 ; 23 T. L. R. 612 ; 5 L. G. R. 1004 ; 2 Smith, Reg. Cas. 12, C. A. 231
Dovaston *v.* Payne (1795), 2 Hy. Bl. 527 300
Dover *v.* Maestaer (1803), 5 Esp. 92 287
——— *v.* Prosser, [1904] 1 K. B. 84 ; 73 L. J. (K. B.) 13 ; 89 L. T. 724 ; 68 J. P. 37 ; 52 W. R. 140 ; 20 T. L. R. 49 ; 1 Smith, Reg. Cas. 313 ; 2 L. G. R. 156 168, 173
Dover Borough Case (1869), 1 O'M. & H. 210 447
——— Case (1860), Wolf. & B. 121 289
Down County Case (1880), 3 O'M. & H. 115 456, 457, 459, 473, 474
Downing *v.* Luckett (1847), 5 C. B. 40 ; 17 L. J. (C. P.) 31 ; 11 Jur. 993 ; 2 Lut. Reg. Cas. 33 160, 161, 185
Downton Case (1784), 1 Lud. E. C. 193 144
Drax *v.* F'fooks, [1896] 1 Q. B. 238 ; 65 L. J. (Q. B.) 270 ; 74 L. T. 43 ; 60 J. P. 214 ; 44 W. R. 393 ; 1 Smith, Reg. Cas. 40, C. A. 191, 192, 205
Drewe *v.* Coulton (1787), 1 East, 563, n. 312, 537
Drinkwater *v.* Deakin (1874), L. R. 9 C. P. 626 ; 43 L. J. (C. P.) 355 ; 30 L. T. 832 305, 306, 486
Drogheda Case (1869), 1 O'M. & H. 252 281
——— (1874), 2 O'M. & H. 201 313, 417, 459, 476
———, 2nd Case (1835), Kn. & Omb. 211 306
Droitwich Case (1835), Kn. & Omb. 65 140
Druitt *v.* Christchurch Overseers (1883), 12 Q. B. D. 365 ; 53 L. J. (Q. B.) 177 ; 32 W. R. 371 ; Colt. 328 148, 159
——— *v.* Gossling (1888), 58 L. J. (Q. B.) 109 ; 60 L. T. 325 ; Fox & S. Reg. 123...157, 167, 227
——— *v.* Lane (1882), Colt. 307 ; Saint's Registration Cases (4th ed.), 360 . 148, 252, 253
Dublin Case (1869), 1 O'M. & H. 270 272, 288, 425
——— City Case (1836), Commons' Journals, p. 364 ; Falc. & Fitz. 88 . 284, 435
Dublin United Tramways Co., Ltd. *v.* Fitzgerald, [1903] A. C. 99 ; 72 L. J. (P. C.) 52 ; 87 L. T. 532 ; 67 J. P. 229 ; 51 W. R. 321 ; 19 T. L. R. 78 ; 1 L. G. R. 386 576
Dudley Borough Case (1874), 2 O'M. & H. 113 322, 448, 474
Dudley Corporation, *Re* (1881), 8 Q. B. D. 86 ; 51 L. J. (Q. B.) 121 ; 45 L. T. 733 ; 46 J. P. 340, C. A. 585
——— *v.* Dudley, Stourbridge and District Election Traction Co. (1907), 97 L. T. 556 ; 71 J. P. 481 ; 5 L. G. R. 1077 602
Dumfermline, Stirling and District Burghs Case (1803), 1 Peck. 1 332
Dummer *v.* Chippenham Corporation (1807), 14 Ves. 245 126
Dumphy *v.* Montreal Light, Heat, and Power Co., [1907] A. C. 454 ; 76 L. J. (P. C.) 71 ; 97 L. T. 499 ; 23 T. L. R. 770 565
Duncan *v.* Jackson (1906), 8 F. 323 186
Dunchurch Division Election, *Re*, *Ex parte* Darlington (1889), 5 T. L. R. 183 . 401, 477
Duncombe *v.* Daniell (1837), 8 C. & P. 222 ; 2 Jur. 32 ; 1 Will. Woll. & H. 101 . 306
Dungannon Case (1880), 3 O'M. & H. 101 271
Durant *v.* Carter (1873), L. R. 9 C. P. 261 ; 43 L. J. (C. P.) 17 ; 29 L. T. 681 ; 22 W. R. 158 ; 2 Hop. & Colt. 142 164
——— *v.* Kennett (1869), L. R. 5 C. P. 262 ; 39 L. J. (C. P.) 17 ; 21 L. T. 603 ; 18 W. R. 286 ; 1 Hop. & Colt. 297 166
——— *v.* Withers (1873), L. R. 9 C. P. 257 ; 43 L. J. (C. P.) 113 ; 22 W. R. 156 ; 2 Hop. & Colt. 202 172
Durham Case (1843), Bar. & Arn. 201 284
——— (1874), 2 O'M. & H. 134 272
——— City Case (1852), 108 Commons' Journals, 132 418
Dyer *v.* London School Board, [1902] 2 Ch. 768 ; 72 L. J. (CH.) 10 ; 87 L. T. 225 ; 51 W. R. 34 ; 18 T. L. R. 804, C. A. 11

E.

PAGE

EADEN *v.* Cooper (1851), 11 C. B. 18; 21 L. J. (C. P.) 32; 16 Jur. 549; 2 Lut. Reg. Cas. 183 227
Eardley *v.* Price (1806), 2 Bos. & P. (N. R.) 333 123
East Clare Case (1892) Day, 161 261, 280, 400
East London Waterworks Co. *v.* Charles, [1894] 2 Q. B. 730; 63 L. J. (M. C.) 209; 71 L. T. 200; 58 J. P. 764; 42 W. R. 702; 10 R. 435 611
——— *v.* St. Matthew, Bethnal Green Vestry (1886), 17 Q. B. D. 475; 55 L. J. (Q. B.) 571; 54 L. T. 919; 50 J. P. 820; 35 W. R. 37, C. A. 577
East Molesey Local Board *v.* Lambeth Waterworks Co., [1892] 3 Ch. 289; 62 L. J. (CH.) 82; 67 L. T. 493; 2 R. 88, C. A. 575
Eastbourne Town Clerk, *Re*, *Ex parte* Keay (1891), 66 L. T. 323 . . . 257
Eastern and South African Telegraph Co. *v.* Cape Town Tramways Co., [1902] A. C. 381; 71 L. J. (P. C.) 122; 86 L. T. 457; 50 W. R. 657; 18 T. L. R. 523 583
Eckersley *v.* Barber (1845), 7 Man. & G. 76; 8 Scott (N. R.), 899; 14 L. J. (C. P.) 65; 9 Jur. 331; Bar. & Arn. 334; 1 Lut. Reg. Cas. 287 . . . 224, 233
Edgar *v.* Blick (1816), 1 Stark. 464 122
Edgware Highway Board *v.* Colne Valley Water Co. (1877), 46 L. J. (CH.) 889. 575
Edinburgh Street Tramways Co. *v.* Edinburgh Corporation, [1894] A. C. 456; 63 L. J. (Q. B.) 769; 71 L. T. 301; 6 R. 317, C. A. 602
Edmundson *v.* Longton Corporation (1902), 19 T. L. R. 15 600
Edwards *v.* Lloyd (1887), 20 Q. B. D. 302; 57 L. J. (Q. B.) 121; 58 L. T. 409; 52 J. P. 519; Fox & S. Reg. 54 145
——— *v.* Whithurst (1860), 5 H. & N. 131; 29 L. J. (EX.) 329; 2 L. T. 302; 8 W. R. 183 334
Edwinstowe Division Case, *Ex parte* Manvers (Lord) (1889), 5 T. L. R. 220 . 401
Eidsforth *v.* Farrer (1846), 4 C. B. 9 213
Elgin and Nairn Case (1895), 5 O'M. & H. 1 . . 263, 264, 266, 268, 279, 303
Elkins *v.* Onslow (1868), 19 L. T. 528 426
Elliot *v.* St. Mary Within, Carlisle, Overseers (1847), 4 C. B. 76; 16 L. J. (C. P.) 101; 11 Jur. 69; 1 Lut. Reg. Cas. 575 200, 207, 226
Ellis *v.* National Union of Conservative Associations (1900), 109 L. T. Jo. 493 . 299
Ennis Election Petition, *Re*, [1900] 2 I. R. 384 476
Enoch, *Re*, [1910] 1 K. B. 327; 79 L. J. (K. B.) 363; 101 L. T. 801, C. A. . 441
Ermen, *Re*, Tatham *v.* Ermen, [1903] 2 Ch. 156; 72 L. J. (CH.) 492; 88 L. T. 352; 5 W. R. 474 477, 521
Escott *v.* Newport Corporation, [1904] 2 K. B. 369; 73 L. J. (K. B.) 693; 90 L. T. 348; 68 J. P. 135; 52 W. R. 543; 20 T. L. R. 158; 2 L. G. R. 779 . 643
Essex South Eastern Division, *Re* (1887), 19 Q. B. D. 252; 56 L. J. (Q. B.) 356; 57 L. T. 104; 36 W. R. 44 334
——— South-Western Division Case (1886), 2 T. L. R. 388 . . . 268, 296, 400
Etherington *v.* Wilson (1875), L. R. 20 Eq. 606; 32 L. T. 789; reversed (1876) 1 Ch. D. 160 306
"Ettrick," The (1881), 6 P. D. 127; 45 L. T. 399; 4 Asp. M. L. C. 465 . . 583
Evesham Borough Case (1880), 3 O'M. & H. 192 425, 441, 474
——— Case (1838), Falc. & Fitz. 504 288

F.

FALCONER *v.* Dunlop (1890), [1897] W. N. 124; 18 R. (Ct. of Sess.) 342 . . 177
——— *v.* Lessels (1890), 18 Ct. of Sess. 351 165
Fareham Local Board and Fareham Electric Light Co. *v.* Smith (1891), 7 T. L. R. 443 643
Faulkner *v.* Elger (1825) 4 B. & C. 449; 6 Dow. & Ry. (K. B.) 517 . . . 323
——— *v.* Upper Boddington Overseers (1857), 3 C. B. (N. S.) 412 . . . 149
Feddon *v.* Sawyers (1852), 12 C. B. 680; 22 L. J. (C. P.) 15; 17 Jur. 141; 2 Lut. Reg. Cas. 246 213
Fenning *v.* Halse, [1892] 1 Q. B. 203; 61 L. J. (Q. B.) 57; 66 L. T. 499; 40 W. R. 206; Fox & S. Reg. 240 208
Fenwick, *Ex parte*, *Re* South Wimbledon Division Election. *See* South Wimbledon Division Election, *Re*, *Ex parte* Fenwick.
——— *v.* East London Rail. Co. (1875), L. R. 20 Eq. 544; 44 L. J. (CH.) 602; 23 W. R. 901 561

PAGE
Fernie *v.* Scott (1871), L. R. 7 C. P. 202; 41 L. J. (C. P.) 20; 25 L. T. 836; 20 W. R. 236; 1 Hop. & Colt. 718 148
Fewings *v.* Tisdal (1847), 1 Exch. 295; 5 Dow. & L. 196; 17 L. J. (EX.) 18; 11 Jur. 977 123
Finchley Electric Light Co. *v.* Finchley Urban Council, [1902] 1 Ch. 866; 71 L. J. (CH.) 450; 86 L. T. 286; 66 J. P. 502; 50 W. R. 470; 18 T. L. R. 449 566
Finsbury Central Division Case (1892), 4 O'M. & H. 171, 176, 177; Day, 16, 19 . 140, 268, 293, 313, 315, 427, 429, 445, 450, 454, 455, 457, 458
Firth *v.* Widdicombe (1871), L. R. 7 C. P. 172; 41 L. J. (C. P.) 38; 25 L. T. 833; 20 W. R. 234; 1 Hop. & Colt. 653 207, 227
Fisher *v.* Jackson, [1891] 2 Ch. 84; 60 L. J. (CH.) 482; 64 L. T. 782 . . 125, 126
Fitzgerald *v.* Northcote (1865), 4 F. & F. 656 122, 123, 124
Fitzgerald's Case (1869) L. R. 5 Q. B. 1; 39 L. J. (Q. B.) 1; 18 W. R. 208 . 464, 465
Flack, *Re*, *Ex parte* Berry, [1900] 2 Q. B. 32; 69 L. J. (Q. B.) 458; 82 L. T. 503; 48 W. R. 446 599
Flemming *v.* Cave (Barnstaple Election Petition) (1875), 44 L. J. (C. P.) 200; 32 L. T. 160 478
Fletcher *v.* Birkenhead Corporation, [1907] 1 K. B. 205; 76 L. J. (K. B.) 218; 96 L. T. 287; 71 J. P. 111; 23 T. L. R. 195; 5 L. G. R. 293, C. A. . . 574
Flint *v.* Sharp (1855), 17 C. B. 281; 25 L. J. (C. P.) 36; 1 Jur. (N. S.) 1141; 4 W. R. 24 214
Flintham *v.* Roxburgh (1886), 17 Q. B. D. 44; 55 L. J. (Q. B.) 472; 54 L. T. 797; 50 J. P. 311; 34 W. R. 543 184
Flounders *v.* Donner (1846), 2 C. B. 63; 15 L. J. (C. P.) 81; 10 Jur. 207; Bar. & Arn. 588; 1 Lut. Reg. Cas. 365 227
Foley *v.* Wontner (1820), 2 Jac. & W. 245 126
Force *v.* Floud (1863), 15 C. B. (N. S.) 543; Hop. & Ph. 56; 33 L. J. (C. P.) 71; 9 L. T. 508; 10 Jur. (N. S.) 134; 12 W. R. 174 212
Ford *v.* Barnes (1885), 16 Q. B. D. 254; 55 L. J. (Q. B.) 24; 53 L. T. 675; 50 J. P. 37; 34 W. R. 78; Colt. 396 164
—— *v.* Boon (1871), L. R. 7 C. P. 150; 41 L. J. (C. P.) 28; 25 L. T. 830; 20 W. R. 251; 1 Hop. & Colt. 668. 227, 228, 255, 256
—— *v.* Drew (1879) 5 C. P. D. 59; 49 L. J. (C. P.) 172; 41 L. T. 478; 44 J. P. 58; 28 W. R. 137 179
—— *v.* Hoar (1884), 14 Q. B. D. 507; 54. L. J. (Q. B.) 286; 53 L. T. 44; 49 J. P. 103; 33 W. R. 566; Colt. 351 225
—— *v.* Newth, *Re* Gloucester Municipal Election Petition, 1900. *See* Gloucester Municipal Election Petition, 1900, *Re*, Ford *v.* Newth.
—— *v.* Pye (1873), L. R. 9 C. P. 269; 43 L. J. (C. P.) 21; 29 L. T. 684; 22 W. R. 159; 2 Hop. & Colt. 157 165
Forster, *Ex parte* (1903), 89 L. T. 18; 67 J. P. 323; 19 T. L. R. 525; 1 L. G. R. 632 402, 506, 508
Foskett *v.* Kaufmann (1885), 16 Q. B. D. 279; 55 L. J. (Q. B.) 1; 34 W. R. 90, C. A. 224, 525, 226, 227
Foster *v.* Medwin (1880), 5 C. P. D. 87; 49 L. J. (C. P.) 297; 42 L. T. 254; 44 J. P. 315; 28 W. R. 660; Colt. 118 255
—— *v.* Mulhall (1859), 10 I. C. L. R. 532 150, 188
Fox *v.* Dalby (1874), L. R. 10 C. P. 285; 44 L. J. (C. P.) 42; 31 L. T. 478; 23 W. R. 244; 2 Hop. & Colt. 561 172
Francis *v.* Metcalfe (1896) 75 L. T. 380; 61 J. P. 355; 45 W. R. 174; 1 Smith, Reg. Cas. 90 228
Freake's Settlement, *Re*, Kinnaird *v.* Freake, [1902] 1 Ch. 97; 71 L. J. (CH.) 20; 85 L. T. 454; 50 W. R. 237 640
Freeman *v.* Gainsford (1861), 11 C. B. (N. S.) 68; K & G. 448; 31 L. J. (C. P.) 33; 5 L. T. 611; 8 Jur. (N. S.) 717 149, 166
——— *v.* ——— (1865), 18 C. B. (N. S.) 185; 34 L. J. (C. P.) 95; 11 L. T. 675; 13 W. R. 343; Hop. & Ph. 255 147
——— *v.* Newman (1883), 12 Q. B. D. 373; 53 L. J. (Q. B.) 108; 51 L. T. 396; 32 W. R. 246; Colt. 342. 214
Fremington School, *Re*, *Ex parte* Ward (1847), 11 Jur. 421 126
Friend *v.* Towers (1882), 10 Q. B. D. 87; 52 L. J. (Q. B.) 109; 48 L. T. 973; 47 J. P. 197; 31 W. R. 247; Colt. 310 224, 225
Fryer *v.* Bodenham (1869), L. R. 4 C. P. 529; 38 L. J. (C. P.) 185; 19 L. T. 645; 17 W. R. 294; 1 Hop. & Colt. 204 149, 166
Fulham Borough Council and National Electric Construction Co., Ltd., *Re* (1905), 70 J. P. 55; 4 L. G. R. 115 546
Fulham Vestry *v.* Minter, [1901] 1 K. B. 501; 70 L. J. (K. B.) 348; 84 L. T. 49; 65 J. P. 180; 49 W. R. 415; 17 T. L. R. 192 583

PAGE

Furness *v.* Beresford, [1898] 1 Q. B. 495; 67 L. J. (Q. B.) 417; 78 L. T. 137; 46 W. R. 359; 14 T. L. R. 249, C. A. 424, 426, 427
Futcher *v.* Saunders (1885), 49 J. P. 424 359

G.

GADSBY *v.* Barrow (1844), 7 Man & G. 21; 8 Scott (N. R.), 799; 14 L. J. (C. P.) 51; 8 Jur. 1031; Bar. & Arn. 283; 1 Lut. Reg. Cas. 142 . .
——— *v.* Warburton (1844), 7 Man. & G. 11; 14 L. J. (C. P.) 41; 9 Jur. 17; Bar. & Arn. 272; 1 Lut. Reg. Cas. 136 212, 254
Gainsford *v.* Freeman (1865), L. R. 1 C. P. 129; 1 Har. & Ruth. 353; Hop. & Ph. 329; 35 L. J. (C. P.) 92; 13 L. T. 595; 12 Jur. (N. S.) 192; 14 W. R. 203 155
Gale, *Ex parte* (1905), 69 J. P. 281; 3 L. G. R. 421 401
—— *v.* Overend (1890), Fox & S. Reg. 179 255
Gallagher *v.* Hay, Hay's Case. *See* Hay's Case, Gallagher *v.* Hay.
Galway Case (1838), Falc. & Fitz. 579 306
——————— (1857), Wolf. & D. 136 289
——————— (1869), 1 O'M. & H. 303 292, 451
——————— (1872), 2 O'M. & H. 46 271, 278, 306, 440, 442, 447
——————— (1874), 2 O'M. & H. 196 271
Garbutt *v.* Trevor (1863), 15 C. B. (N. S.) 550; Hop. & Ph. 69; 33 L. J. (C. P.) 73; 9 L. T. 535; 10 Jur. (N. S.) 131; 12 W. R. 471 153
Gardner *v.* Bygrave (1889), 53 J. P. 743; 6 T. L. R. 23 124
Gas Light and Coke Co. *v.* Mead (1876), 45 L. J. (M. C.) 71; 33 L. T. 729 . . 599
——————— *v.* St. Mary Abbott's, Kensington, Vestry (1885), 15 Q. B. D. 1; 54 L. J. (Q. B.) 414; 53 L. T. 457; 49 J. P. 469; 33 W. R. 892, C. A. 584
——————— *v.* South Metropolitan Gas Co. (1889), 62 L. J. (CH.) 123; 62 L. T. 126; 54 J. P. 373 566
Gaydon *v.* Bencraft (1864), 18 C. B. (N. S.) 11; Hop. & Ph. 97; 34 L. J. (C. P.) 53; 11 L. T. 483; 10 Jur. (N. S.) 1206; 13 W. R. 267 179
Genge's Case (1842), Bar. & Aust. 486 185
George's Case (1870), 22 L. T. 731 425
Gifford *v.* St. Luke's, Chelsea Overseers (1889), 24 Q. B. D. 141; 59 L. J. (Q. B.) 98; 61 L. T. 810; 54 J. P. 230; Fox & S. Reg. 139 211
Gilford's Case (1585), 4 Leon. 156 92
Gilham *v.* Harris (1866), L. R. 1 C. P. 158; 35 L. J. (C. P.) 101; 12 Jur. (N. S.) 627; 14 W. R. 479; 1 Har. & Ruth. 358; Hop. & Ph. 305 160
Gillies *v.* Quigley (1905), 8 F. (Ct. of Justiciary) 1; 4 Adam, 601 60
Gillo's Case, Loveridge *v.* Gardom. *See* Loveridge *v.* Gardom, Gillo's Case.
Glasgow Corporation *v.* Glasgow and South Western Rail. Co., [1895] A. C. 376; 64 L. J. (P. C.) 171; 72 L. T. 809; 59 J. P. 788; 11 R. 226. . . . 574
Gledhill *v.* Crowther (1889), 23 Q. B. D. 136; 58 L. J. (Q. B.) 327; 60 L. T. 866; 53 J. P. 677 275
Glenn *v.* Brennan (1894), 2 Laws. Reg. Cas. 10 162
Gloucester Borough Case (1873), 2 O'M. & H. 59. 292, 293, 455, 456
——————— Municipal Election Petition, 1900, *Re*, Ford *v.* Newth, [1901] 1 K. B. 683; 70 L. J. (K. B.) 459; 84 L. T. 354; 65 J. P. 391; 49 W. R. 345; 17 T. L. R. 325 339, 461, 489
Gloucestershire Case (1777), Orme, Election Laws, 121 144
——————— (1800—1812), Orme, Election Laws, 474 429
Godsell *v.* Innous (1855), 17 C. B. 295 211
Goldney *v.* King (1910), *Times*, February 7th 123
Goodrich *v.* Great Grimsby Town Clerk, [1902] 1 K. B. 301; 71 L. J. (K. B.) 99; 85 L. T. 583; 50 W. R. 170; 1 Smith, Reg. Cas. 273 226
Goodson *v.* Sunbury Gas Consumers' Co. (1896), 75 L. T. 251; 60 J. P. 585...565, 576
Gosling *v.* Veley (1847), 7 Q. B. 406; 16 L. J. (Q. B.) 201; 11 Jur. 385 . . 306
Gossage's Case, R. *v.* Barnardo. *See* R. *v.* Barnardo, Gossage's Case.
Gothard *v.* Chapman, *Re* Smallwood. *See* Smallwood, *Re*, Gothard *v.* Chapman.
——— *v.* Clarke (1880), 5 C. P. D. 253; 49 L. J. (C. P.) 474; 42 L. T. 776; 44 J. P. 587; 29 W. R. 102 275
Gough *v.* Bateman (1700), 1 Lut. 184 332
Grand Junction Waterworks Co. *v.* Hampton Urban Council (1898), 67 L. J. (Q. B.) 903; 79 L. T. 176 612
Grant *v.* Pagham Overseers (1877), 3 C. P. D. 80; 47 L. J. (C. P.) 59; 37 L. T. 404; 26 W. R. 169; 2 Hop. & Colt. 384 486

PAGE
Gravesend Case (1880), 3 O'M. & H. 81 287, 453, 454, 462, 472
Gray *v.* Deuchar (1890), [1897] W. N. 123 ; 18 R. (Ct. of Sess.) 341 176
Great Western Rail. Co. *v.* Sutton (1869), L. R. 4 H. L. 226 ; 38 L. J. (EX.) 177 ; 22 L. T. 43 ; 18 W. R. 92 589
Great Yarmouth Borough Case (1906), 5 O'M. & H. 176 . 263, 264, 265, 271, 290, 291, 298, 341, 461, 474
Green *v.* Hall, Oxford Election Petition. *See* Oxford Election Petition, Green *v.* Hall.
—— *v.* Mepham (1878), 2 H. & C. 458 194
—— *v.* Wanklyn, [1906] 1 K. B. 394 ; 75 L. J. (K. B.) 216 ; 93 L. T. 770 ; 70 J. P. 19 ; 54 W. R. 197 ; 22 T. L. R. 31 ; 4 L. G. R. 80 ; 1 Smith, Reg. Cas. 410 226
Greenock Case (1892), Day, 20 427
———— (1869), 1 O'M. & H. 250, 251 261, 270
———— Election Petition (1868). *See* Beal *v.* Smith.
Greenslade *v.* Darby (1868), L. R. 3 Q. B. 421 ; 9 B. & S. 428 ; 37 L. J. (Q. B.) 137 ; 18 L. T. 463 ; 16 W. R. 898 149
Greenway *v.* Bachelor, Jacob's Case (1883), 12 Q. B. D. 376 ; 53 L. J. (Q. B.) 179 ; 50 L. T. 270 ; 32 W. R. 320 184, 237
———— *v.* Hockin (1870), L. R. 5 C. P. 235 ; 39 L. J. (C. P.) 103 ; 22 L. T. 304 ; 1 Hop. & Colt. 403 147
Gregory and Frost, *Ex parte*, *Re* West Dorchester Election. *See* West Dorchester Election, *Re*, *Ex parte* Gregory and Frost.
Gregory *v.* Turner (1868), 1 Hop. & Colt. 43 253
Gribbin *v.* Kirker (1873), 7 I. R. C. L. 30 313
Grimsby (1903), Roger on Elections, ed. 1906, p. 225 424
Groves *v.* Wimborne (Lord), [1898] 2 Q. B. 402 ; 67 L. J. (Q. B.) 862 ; 79 L. T. 284 ; 47 W. R. 87 ; 14 T. L. R. 493, C. A. 576
Guildford Case (1869), 1 O'M. & H. 13 283, 287, 446, 447, 473
Guise *v.* Dilke (1892), Fox & S. Reg. 283 249

H.

HACKNEY Borough Case (1874), 2 O'M. & H. 78 436
———— Case (1874) 2 O'M. & H. 77 313, 476
Hadfield's Case, Webster *v.* Ashton-under-Lyne Overseers. *See* Webster *v.* Ashton-under-Lyne Overseers, Hadfield's Case.
Haggerston Division Case (1896), 5 O'M & H. 68 . 290, 298, 423, 424, 434, 473, 474
Hailsham Division Election, *Re*, *Ex parte* Ives (1888), 5 T. L. R. 136 . . . 401
Halifax Borough Case (1893), 4 O'M. & H. 203 427, 432, 433, 436
Hall *v.* Cropper (1879), 5 C. P. D. 73 ; 49 L. J. (C. P.) 160 ; 41 L. T. 470 ; 28 W. R. 395 213
—— *v.* Lewis (1861), 11 C. B. (N. S.) 114 ; K. & G. 499 ; 31 L. J. (C. P.) 45 ; 5 L. T. 491 ; 8 Jur. (N. S.) 646 ; 10 W. R. 151 150
—— *v.* Metcalfe, [1892] 1 Q. B. 208 ; 61 L. J. (Q. B.) 53 ; 66 L. T. 496 ; Fox & S. Reg. 227 156, 159
—— *v.* Michelmore (1901), 86 L. T. 17 ; 65 J. P. 759 ; 50 W. R. 172 ; 17 T. L. R. 33 ; 1 Smith, Reg. Cas. 269 167
Hamilton *v.* Bass (1852), 12 C. B. 631 ; 22 L. J. (C. P.) 29 ; 17 Jur. 115 ; 2 Lut. Reg. Cas. 213 151
———— *v.* Ferguson (1897), [1899] W. N. 169 ; 25 R. (Ct. of Sess.) 94 . . . 175
———— *v.* Paton (1898), [1899] W. N. 175 ; 1 F. (Ct. of Sess.) 208 . . . 177
Hampton Division, *Ex parte* De Wette (1889), 5 T. L. R. 173 401
Hanbidge *v.* Beveridge (1889), 26 L. R. Ir. 423, C. A. 207, 229
———— *v.* Campbell (1893), 1 Laws. Reg. Cas. 347 239, 248, 249
Hance *v.* Fairhurst (1882), 51 L. J. (M. C.) 139 ; 47 J. P. 53 57
—— *v.* Fortnum (1882), 10 Q. B. D. 218 ; 52 L. J. (M. C.) 25 ; 48 L. T. 229 ; 47 J. P. 325 ; 31 W. R. 271 56
Hannaford *v.* Whiteway (1856), 1 C. B. (N. S.) 53 ; 26 L. J. (C. P.) 76 ; 3 Jur. (N. S.) 673 ; 5 W. R. 75 215
Harding *v.* Barker (1888), 53 J. P. 308 ; 37 W. R. 78 613
———— *v.* Cornwell (1889), 60 L. T. 959 275
———— *v.* Stokes (1837), 2 M. & W. 233 ; 6 L. J. (EX.) 76 ; 1 Jur. 200 ; Murp. & H. 6 283
Hardwick *v.* Brown (1873), L. R. 8 C. P. 406 ; 28 L. T. 502 ; 21 W. R. 639 . 359
Harford *v.* Linskey, [1899] 1 Q. B. 852 ; 68 L. J. (Q. B.) 599 ; 80 L. T. 417 ; 63 J. P. 263 ; 15 T. L. R. 306 264, 276 410, 412

PAGE
Hargreaves *v.* Hopper (1875), 1 C. P. D. 195; 45 L. J. (C. P.) 105; 33 L. T. 530; 24 W. R. 186 139
Harman *v.* Tappenden (1801), 1 East, 563 312
Harmon *v.* Park (1880), 6 Q. B. D. 323; 50 L. J. (Q. B.) 227; 44 L. T. 81; 29 W. R. 750 417, 418
——— *v.* ——— (1881), 7 Q. B. D. 369; 50 L. J. (Q. B.) 775; 45 L. T. 174; 45 J. P. 714 275
Harris *v.* Amery (1865), L. R. 1 C. P. 148; 1 Har. & Ruth. 358; Hop. & Ph. 294; 35 L. J. (C. P.) 89; 13 L. T. 504; 12 Jur. (N. S.) 165; 14 W. R. 199 152, 167
——— *v.* Phillips, [1891] 1 Q. B. 267; 55 J. P. 281; Fox & S. Reg. 223 . 139, 147
Harris' Case, Campbell *v.* Chambers. *See* Campbell *v.* Chambers, Harris' Case.
Harrison *v.* Carter (1876), 2 C. P. D. 26; 2 Hop. & Colt. 324; 46 L. J. (C. P.) 57; 35 L. T. 511; 25 W. R. 182 145
——— *v.* Rutland (Duke), [1893] 1 Q. B. 142; 62 L. J. (Q. B.) 117; 68 L. T. 35; 41 W. R. 322; 4 R. 155, C. A. 300
Hart *v.* Beard, [1896] 1 Q. B. 54; 65 L. J. (Q. B.) 270; 74 L. T. 43; 60 J. P. 214; 44 W. R. 393; 1 Smith, Reg. Cas. 40, C. A. 202
Hartlepool Election Petition (1869), 19 L. T. 821 431, 435
Hartley *v.* Halse (1888), 22 Q. B. D. 200; 58 L. J. (Q. B.) 100; 60 L. T. 322; 37 W. R. 302; Fox & S. Reg. 118 230
——— *v.* Rochdale Corporation, [1908] 2 K. B. 594; 77 L. J. (K. B.) 884; 99 L. T. 275; 72 J. P. 343; 24 T. L. R. 625; 6 L. G. R. 858 575
Harwich Case (1848), 1 Pow. R. & D. 71 288
——— (1880), 3 O'M. & H. 61 . . 272, 273, 284, 285, 425, 449, 452, 479
Haseldine, *Ex parte* (1895), 59 J. P. 71 401
Hastings Case (1869), Leigh and Le Marchant, Law of Elections, 4th ed., 1885, p. 81; 1 O'M. & H. 217 270, 271, 423
Hawke *v.* Dunn, [1897] 1 Q. B. 579; 66 L. J. (Q. B.) 364; 76 L. T. 355; 61 J. P. 292; 45 W. R. 359; 18 Cox, C. C. 543 256
Hawkins, *Ex parte*, Cambridge Case. *See* Cambridge Case, *Ex parte* Hawkins.
——— *v.* R. (1813), 2 Dowl. 124; 10 East, 211 305
Hay's Case, Gallagher *v.* Hay (1892), [1897] W. N. 134; 32 L. R. Ir. 166 . 176
Hayden *v.* Tiverton (1846), 4 C. B. 1; 16 L. J. (C. P.) 88; 10 Jur. 950; 1 Lut. Reg. Cas. 510 148
Hayman *v.* Rugby School (Governors) (1874), L. R. 18 Eq. 28; 43 L. J. (CH.) 834; 30 L. T. 217; 22 W. R. 587 98
Hayward *v.* East London Waterworks Co. (1884), 28 Ch. D. 138; 54 L. J. (CH.) 523; 52 L. T. 175 592
——— *v.* Scott (1879), 5 C. P. D. 231; 49 L. J. (C. P.) 167; 44 J. P. 122; 28 W. R. 988; Colt. 76 233
Heartley *v.* Banks (1858), 5 C. B. (N. S.) 40; K. & G. 219; 28 L. J. (C. P.) 144; 5 Jur. (N. S.) 492; 7 W. R. 342 149, 166
Heath *v.* Haynes (1857), 3 C. B. (N. S.) 389; K. & G. 99; 27 L. J. (C. P.) 50; 4 Jur. (N. S.) 664; 6 W. R. 52 149, 166
Hebburn Urban District Council *v.* Hedworth, Monkton, and Jarrow United District School Board (1904), 90 L. T. 145; 68 J. P. 232; 20 T. L. R. 244; 2 L. G. R. 821 17, 25
Heelis *v.* Blain (1864), 18 C. B. (N. S.) 90; Hop. & Ph. 189; 34 L. J. (C. P.) 88; 11 L. T. 480; 11 Jur. (N. S.) 18; 13 W. R. 262 148, 255
Hempson, *Ex parte*, *Re* Walton Division Election. *See* Walton Division Election, *Re*, *Ex parte* Hempson.
Hemsworth Free Grammar School and Hospital and Barnsley Grammar School, *Re* (1887), 12 App. Cas. 444; 56 L. J. (P. C.) 52; 56 L. T. 212; 35 W. R. 418 100, 102
Henrette *v.* Booth (1863), 15 C. B. (N. S.) 500; 33 L. J. (C. P.) 61; 9 L. T. 392; 9 Jur. (N. S.) 1293; 12 W. R. 173; Hop. & Ph. 23 185
Henry *v.* Armitage (1883), 12 Q. B. D. 257; 53 L. J. (Q. B.) 111; 50 L. T. 4; 48 J. P. 424; 32 W. R. 192, C. A. 274
Henslow *v.* Fawcett (1835), 3 Ad. & El. 51; 4 Nev. & M. (K. B.) 585 . . . 283
Hepburn *v.* Wilson (1901), 3 Adam, 502; 4 F. (Ct. of Justiciary) 18 559
Hereford Case (1869), 1 O'M. & H. 194 270, 271, 424, 425
——— (City) Election Petition, Preece *v.* Pulley (1880), 49 L. J. (Q. B.) 636 . 419
Herring *v.* Boyle (1834), 1 Cr. M. & R. 377; 6 Car. & P. 496; 4 Tyr. 801; 3 L. J. (EX.) 344 123
Hersant *v.* Halse (1886), 18 Q. B. D. 412; 56 L. J. (Q. B.) 44; 56 L. T. 337; 51 J. P. 135; 35 W. R. 503; Fox & S. Reg. 12 175, 207, 228, 229
Hertford Case (1833), Cockb. & Rowe, 184 282

PAGE
Hewett *v.* Thompson (1889), 60 L. T. 268 58
Hexham Case (1892), Day, 68 293
——— Division (1892), Day, 12, 14, 76, 78, 90, 93; Parliamentary Papers (No. 25), 1893; 4 O'M. & H. 143 . 269, 271, 272, 290, 291, 338, 402, 404, 423, 426, 441, 443, 462, 476, 477
——— Election Petition, *Re* (1892), *Times*, November 8th 438
Heywood *v.* Dodson and Lawley (1880), 44 L. T. 285 273, 461
Hicks *v.* Stokes, [1893] 1 Q. B. 124; 57 J. P. 678; 41 W. R. 123; 5 R. 96; Fox & S. Reg. 303 212
Hickton *v.* Antrobus (1846), 2 C. B. 82 215
Hill *v.* Peck (1868), 19 L. T. 527 424
Hinde *v.* Chorlton (1866), L. R. 2 C. P. 104; 36 L. J. (C. P.) 79; 15 L. T. 472; 12 Jur. (N. S.) 1008; 15 W. R. 226 147
Hinton, *Ex parte*, New Swindon Case. *See* New Swindon Case, *Ex parte* Hinton.
——— *v.* Hinton (1845), 7 Man. & G. 163; 8 Scott (N. R.), 995; 14 L. J. (C. P.) 58; 9 Jur. 91; Bar. & Arn. 421; 1 Lut. Reg. Cas. 259 . . 200, 214, 248, 254
Hitchins *v.* Brown (1845), 1 Lut. Reg. Cas. 328 254
——— *v.* ——— (1845), 2 C. B. 25; 15 L. J. (C. P.) 38; 9 Jur. 1058 . 227, 228, 251, 252
Hobbs, *Ex parte*, *Re* Ramsgate Election. *See* Ramsgate Election, *Re*, *Ex parte* Hobbs.
——— *v.* Morey, [1904] 1 K. B. 74; 73 L. J. (K. B.) 47; 89 L. T. 531; 68 J. P. 132; 52 W. R. 348; 20 T. L. R. 50; 2 L. G. R. 7 . . . 276, 458
Hodges *v.* Hodges (1796), Peake, Add. Cas. 79 4
Hodgson's School, *Re* (1878), 3 App. Cas. 857; 47 L. J. (P. C.) 101; 38 L. T. 790 100, 102, 105, 109
Holland, *Ex parte*, *Re* Buxton School. *See* Buxton School, *Re*, *Ex parte* Holland.
——— *v.* Chambers, Devine's Case, [1894] 2 I. R. 442, C. A. 167
——— *v.* ——— O'Neill's Case (1894), 2 Laws. Reg. Cas. 9; 29 I. L. T. 26 162, 167
——— *v.* Hagan (1894), [1897] W. N. 108; [1895] 2 I. R. 551 164
Holme *v.* Grey (1877), 5 Ch. D. 901; 46 L. J. (CH.) 648; 36 L. T. 600; 25 W. R. 547 127
Holt *v.* Lyle. *See* Olive *v.* Ingram.
Honeybone *v.* Hambridge (1886), 18 Q. B. D. 418; 56 L. J. (Q. B.) 46; 56 L. T. 365; 51 J. P. 103; 35 W. R. 520; Fox & S. Reg. 26 142
Honeywood *v.* Geary (Sir W.) (1808), 6 Esp. 119 272
Hornby *v.* Liverpool United Gas Light Co. (1883), 47 J. P. 231 . . . 565, 574, 576
Hornsby *v.* Robson (1856), 1 C. B. (N. S.) 63; 26 L. J. (C. P.) 55; 3 Jur. (N. S.) 674 215
Hornsey District Council *v.* Smith, [1897] 1 Ch. 843; 66 L. J. (CH.) 476; 76 L. T. 431; 45 W. R. 581, C. A. 119
Horsham Case (1869), 20 L. T. 180 423, 427
——— (1876), 3 O'M. & H. 52 288, 459, 472
Hounsell *v.* Suttill, Bridport Election Petition. *See* Bridport Election Petition, Hounsell *v.* Suttill.
Howes *v.* Turner (1876), 1 C. P. D. 670; 45 L. J. (C. P.) 550; 35 L. T. 58 . 275, 276, 344
Howitt *v.* Nottingham Tramways Co., Ltd. (1883), 12 Q. B. D. 16; 53 L. J. (Q. B.) 21; 50 L. T. 99; 32 W. R. 248 579
——— *v.* Stephens (1858), 5 C. B. (N. S.) 30; K. & G. 183; 28 L. J. (C. P.) 105; 5 Jur. (N. S.) 123; 7 W. R. 55 224, 226
Hoyland *v.* Bremner (1846), 2 C. B. 84; 15 L. J. (C. P.) 133; 10 Jur. 36; 1 Lut. Reg. Cas. 381; Bar. & Arn. 611 153
Huckle *v.* Piper (1871), L. R. 7 C. P. 193; 41 L. J. (C. P.) 42; 1 Hop. & Colt. 680; 25 L. T. 809; 20 W. R. 235 156, 157, 160
Huddersfield Borough Case (1853), 2 Pow. R. & D. 124 272
——— Case (1859), Wolf. & B. 28 282, 288
Hudson *v.* Tooth (1877), 3 Q. B. D. 46; 47 L. J. (Q. B.) 18; 37 L. T. 462; 26 W. R. 95 438
Huggett *v.* Lewis (1854), 15 C. B. 245; 24 L. J. (C. P.) 38; 1 Jur. (N. S.) 19; 3 W. R. 109 211
Hughes, *Ex parte*, West Lambeth School Board Case. *See* West Lambeth School Board Case, *Ex parte* Hughes.
——— *v.* Barnett (1857), 7 I. C. L. R. 369 206
——— *v.* Chatham Overseers (1843), 5 Man. & G. 54; 7 Scott (N. R.), 581; 13 L. J. (C. P.) 44; 7 Jur. 1136; 1 Lut. Reg. Cas. 51 168

PAGE

Hughes *v.* Marshall (1831), 2 Cr. & J. 118; 1 L. J. (EX.) 16; 2 Tyr. 134; 5 C. & P. 150; Price, Notes of Practice in the Exchequer, 173 . . . 280
Humphrey *v.* Earle (1887), 20 Q. B. D. 294; 57 L. J. (Q. B.) 124; 58 L. T. 403; 52 J. P. 518; 36 W. R. 510; Fox & S. Reg. 39 211, 212
Hunt *v.* Halse, [1892] 1 Q. B. 203; 61 L. J. (Q. B.) 57; 56 L. T. 499; 40 W. R. 206; Fox & S. Reg. 240 208
Hunter *v.* Johnson (1884), 13 Q. B. D. 225; 53 L. J. (M. C.) 182; 51 L. T. 791; 48 J. P. 663; 32 W. R. 857; 15 Cox, C. C. 600 60, 124
Hunter District Board *v.* Newcastle Coal Co., [1896] A. C. 82; 65 L. J. (P. C.) 1; 73 L. T. 541 590
Huntingtower (Lord) *v.* Gardiner (1823), 1 B. & C. 297; 2 Dow. & Ry. (K. B.) 450; 1 L. J. (O. S.) (K. B.) 120 285
Hurcum *v.* Hilleary (1893), Fox & S. Reg. 351 256
——— *v.* ———, [1894] 1 Q. B. 579, C. A. 227
Hurdle *v.* Waring (1874), L. R. 9 C. P. 435; 43 L. J. (C. P.) 209; 30 L. T. 329; 22 W. R. 735 332, 333, 414
Husey *v.* Gas Light and Coke Co. (1902), 18 T. L. R. 299 599
——— *v.* London Electric Supply Corporation, [1902] 1 Ch. 411; 71 L. J. (CH.) 313; 86 L. T. 166; 50 W. R. 420; 18 T. L. R. 296, C. A. 591, 599
Hutchinson, *Ex parte*, *Re* Bennington Electoral Division Election. *See* Bennington Electoral Division Election, *Re*, *Ex parte* Hutchinson.
Hutt *v.* Haileybury College (Governors) (1888), 4 T. L. R. 623 124

I.

ILCHESTER Case (1803), 1 Peck. 302 281
Ipswich Borough Case (1886), 4 O'M. & H. 20 461
——— Case (1835), Kn. & Omb. 332 282, 285, 446
——— (1857), 1 Wolf & D. 173 282, 286
——— (1886), 4 O'M. & H. 70 . . 269, 280, 293, 442, 462, 473, 474, 535
——— Election, *Re* (1887), 3 T. L. R. 397 402
——— Petition (1886). *See* R. *v.* Mansel-Jones.
Isaacson *v.* Durant, Stepney Election Petition, *Re*. *See* Stepney Election Petition, *Re*, Isaacson *v.* Durant.
Isle of Wight County Council *v.* Holland (1909), 73 J. P. 507; 7 L. G. R. 1182 57
Isleworth Division Election, *Re*, *Ex parte* Measom (1889), 5 T. L. R. 221 . 401
Islington Borough Western Division Case (1901), 5 O'M. & H. 120 . . 313, 322, 417, 450, 473, 476
Ives, *Ex parte*, *Re* Hailsham Division Election. *See* Hailsham Division Election, *Re*, *Ex parte* Ives.

J.

JACK *v.* Edie (1906), 8 F. (Ct. of Sess.) 329 161
Jacob *v.* Lee (1837), 2 Mood. & R. 33 429
Jacob's Case, Greenway *v.* Bachelor. *See* Greenway *v.* Bachelor, Jacob's Case.
James *v.* Henderson (1874), 43 L. J. (C. P.) 238; 30 L. T. 527 429
——— *v.* Howarth (1879), 5 C. P. D. 225; 49 L. J. (C. P.) 169; 44 J. P. 554; 28 W. R. 923; Colt. 87 213, 230, 255
——— *v.* Ivemey, [1901] 1 K. B. 193; 70 L. J. (K. B.) 263; 83 L. T. 587; 64 J. P. 791; 17 T. L. R. 70; 1 Smith, Reg. Cas. 249 179, 314
Jarvis *v.* Peele (1851), 11 C. B. 15; 2 Lut. Reg. Cas. 182 253
Jenkins, *Ex parte*, R. *v.* Nepean. *See* R. *v.* Nepean, *Ex parte* Jenkins.
——— *v.* Grocott, [1904] 1 K. B. 374; 73 L. J. (K. B.) 215; 90 L. T. 90; 68 J. P. 75; 52 W. R. 267; 20 T. L. R. 148; 1 Smith, Reg. Cas. 335; 2 L. G. R. 202 175, 176, 229, 232
Johnson *v.* Shrowsbury and Birmingham Rail. Co. (1853), 3 De G. M. & G. 914; 22 L. J. (CH.) 921; 17 Jur. 1015, C. A. 125
——— and Hughes *v.* Adolphe Crosbie, Ltd., *Re* Crosbie (Adolphe), Ltd. *See* Crosbie (Adolphe), Ltd., Johnson and Hughes *v.* Adolphe Crosbie, Ltd.
Jolliffe *v.* Rice (1848), 6 C. B. 1; 18 L. J. (C. P.) 25; 13 Jur. 39; 2 Lut. Reg. Cas. 90 159, 160, 161, 186
ones, *Ex parte* (1835), 4 Nev. & M. (K. B.) 340; 2 Ad. & El. 436; 1 Har. & W. 7; 4 L. J. (K. B.) 97 311
——— *Re* (1835), 2 Ad. & El. 436 141

PAGE
Jones *v.* Beveridge (1886), 20 L. R. Ir. 380, C. A. 207, 229
——— *v.* Hanrahan (1887), 1 Laws. Reg. Cas. 58 162
——— *v.* Hughes, [1905] 1 Ch. 180; 74 L. J. (CH.) 57; 92 L. T. 218; 69 J. P. 33; 53 W. R. 344; 21 T. L. R. 59; 3 L. G. R. 1, C. A. . . . 25
——— *v.* Innous (1855), 17 C. B. 290; 25 L. J. (C. P.) 78; 1 Jur. (N. S.) 1112; 4 W. R. 84 200, 211
——— *v.* Jones (1865), L. R. 1 C. P. 140; 1 Har. & Ruth. 341; Hop. & Ph. 320; 12 Jur. (N. S.) 123; 35 L. J. (C. P.) 94; 13 L. T. 633 . 214
——— *v.* ——— (1868), L. R. 4 C. P. 422; 38 L. J. (C. P.) 43; 17 W. R. 204; 1 Hop. & Colt. 95; 19 L. T. 561 224
——— *v.* Kent (1888), 22 Q. B. D. 204; 58 L. J. (Q. B.) 106; 60 L. T. 320; 37 W. R. 303; Fox & S. Reg. 109 175, 207, 208, 229
——— *v.* Marshall (1871), 1 Hop. & Colt. 738 249
——— *v.* Munro, [1899] 1 Q. B. 109; 68 L. J. (Q. B.) 28; 79 L. T. 28; 47 W. R. 220; 1 Smith, Reg. Cas. 151 235, 248, 249
——— *v.* Pritchard (1868), L. R. 4 C. P. 414; 38 L. J. (C. P.) 67; 19 L. T. 563; 17 W. R. 175; 1 Hop. & Colt. 91 212, 230
——— *v.* ——— (1891), Fox & S. Reg. 259 256
——— *v.* Rowland (1899), 80 L. T. 630 59
——— *v.* Turner (1891), 7 T. L. R. 421 123
Jordeson *v.* Sutton, Southcoates, and Drypool Gas Co., [1899] 2 Ch. 217; 68 L. J. (CH.) 457; 80 L. T. 815; 63 J. P. 692; 15 T. L. R. 374, C. A. . . 564
Judson *v.* Luckett (1846), 2 C. B. 197; 15 L. J. (C. P.) 163; 10 Jur. 252; 1 Lut. Reg. Cas. 490 224

K.

KEATINGE, *Ex parte*, Rhyl Division Case. *See* Rhyl Division Case, *Ex parte* Keatinge.
Keay, *Ex parte*, *Re* Eastbourne Town Clerk. *See* Eastbourne Town Clerk, *Re*, *Ex parte* Keay.
Kemp *v.* Wanklyn, [1894] 1 Q. B. 583; 63 L. J. (Q. B.) 520; 70 L. T. 478; 58 J. P. 605; 42 W. R. 369; Fox & S. Reg. 360; 9 R. 325, C. A. . . 215, 256
Kempston's Case, Campbell *v.* Chambers. *See* Campbell *v.* Chambers, Kempston's Case.
Kennedy *v.* Buchanan, [1903] 2 I. R. 484, C. A. 172, 233
Kennington Division Case (1886), 4 O'M. & H. 93 . 263, 266, 298, 476, 477, 521
Kent, *Ex parte*, R. *v.* Bell. *See* R. *v.* Bell, *Ex parte* Kent.
——— *v.* Fittall, [1906] 1 K. B. 60; 75 L. J. (K. B.) 310; 94 L. T. 76; 69 J. P. 428; 54 W. R. 225; 22 T. L. R. 63; 4 L. G. R. 36; 1 Smith, Reg. Cas. 417, C. A. 168, 169, 175
——— *v.* ——— (No. 2), [1908] 2 K. B. 933; 77 L. J. (K. B.) 1065; 72 J. P. 421; 24 T. L. R. 665; 52 Sol. Jo. 534; 6 L. G. R. 672; 2 Smith, Reg Cas. 63, C. A. 169, 220, 231, 232, 248
——— *v.* ——— (No. 3), [1909] 1 K. B. 215; 78 L. J. (K. B.) 110; 99 L. T. 776; 73 J. P. 33; 25 T. L. R. 41; 7 L. G. R. 37; 2 Smith, Reg. Cas. 93; 53 Sol. Jo. 48 231
——— *v.* Fraser (1897), 1 Smith, Reg. Cas. 127; 61 J. P. 359; 13 T. L. R. 417 167, 173, 189
Kent County Council, *Ex parte*, R. *v.* Wraith. *See* R. *v.* Wraith, *Ex parte* Kent County Council.
Keown's Case, M'Daid *v.* Chambers. *See* M'Daid *v.* Chambers, Keown's Case.
Kew Bridge Division Case, *Ex parte* Layton and Woolbridge (1889), 5 T. L. R. 198 401
Keys *v.* Collum (1857), 7 I. C. L. R. 385 248
Kidderminster Borough Case (1874), 2 O'M. & H. 172 412
Kidwelly Case, *Ex parte* Stephens (1889), 5 T. L. R. 203 402
King's Lynn Case (1869), 1 O'M. & H. 206 273, 426, 445, 446, 447
Kingston-upon-Hull (1859), Wolf. & B. 84 449
Kinnaird *v.* Freake, *Re* Freake's Settlement. *See* Freake's Settlement, *Re*, Kinnaird *v.* Freake.
Kinross (Lord), *Re*, [1905] A. C. 468; 74 L. J. (P. C.) 137 138, 442
Kirby *v.* Barber (1905), 70 J. P. 20; 54 W. R. 119; 1 Smith, Reg. Cas. 403; 4 L. G. R. 395. 157
——— *v.* Biffen (1881), 8 Q. B. D. 195; 51 L. J. (Q. B.) 183; 46 L. T. 253; 45 J. P. 847; 30 W. R. 823; Colt. 163, C. A. 169

PAGE
Kirby *v.* Harrogate School Board, [1896] 1 Ch. 437; 65 L. J. (CH.) 376; 74 L. T. 6; 60 J. P. 182, C. A. 27
Kirkhouse *v.* Blakeway, [1902] 1 K. B. 306; 71 L. J. (K. B.) 130; 86 L. T. 19; 66 J. P. 38; 50 W. R. 206; 18 T. L. R. 182; 1 Smith, Reg. Cas. 281...142, 233
Kirton *v.* Dear (1869), L. R. 5 C. P. 217; 39 L. J. (C. P.) 36; 21 L. T. 532; 18 W. R. 144; 1 Hop. & Colt. 349 149
Kitchen *v.* Johnson, [1899] 1 Q. B. 95; 68 L. J. (Q. B.) 11; 79 L. T. 422; 63 J. P. 20; 47 W. R. 110; 15 T. L. R. 35; 1 Smith, Reg. Cas. 171 . . . 228
Knaresborough Borough Case (1880), 3 O'M. & H. 141 448, 452
Knight *v.* Isle of Wight Electric Light and Power Co. (1904), 73 L. J. (CH.) 299; 90 L. T. 410; 68 J. P. 266; 20 T. L. R. 173; 2 L. G. R. 390 . . 564
Knill *v.* Towse (1890), 24 Q. B. D. 697; 59 L. J. (Q. B.) 445; 63 L. T. 47; 54 J. P. 789; 38 W. R. 521, C. A. 234. 235, 359, 370
Knowles *v.* Brooking (1846), 2 C. B. 226; 15 L. J. (C. P.) 197; 10 Jur. 289; 1 Lut. Reg. Cas. 461 211
Kyd, *Ex parte* (1897), *Times*, December 22nd 477
—— *Ex parte*, Westminster Division School Board Case. *See* Westminster Division School Board Case, *Ex parte* Kyd.
Kyffin *v.* Metropolitan Water Board (1908), 72 J. P. 517 612

L.

LADD *v.* O Toole, [1904] 2 I. R. 389, C. A. 173
Lambert *v.* St. Thomas, New Sarum, Overseers (1852), 12 C. B. 643; 22 L. J. (C. P.) 31; 17 Jur. 3; 2 Lut. Reg. Cas. 222 213
Lambeth Corporation *v.* South London Electric Supply Corporation (1907), 96 L. T. 440; 71 J. P. 233; 23 T. L. R. 347; 5 L. G. R. 526, C. A. . . . 636
Lancaster Borough, 2nd Case (1848), 1 Pow. R. & D. 146 143
———— Division Case (1896), 5 O'M. & H. 39 . 263, 266, 291, 335, 415, 423, 480
Lane *v.* Norman (1891), 61 L. J. (CH.) 149; 66 L. T. 83; 40 W. R. 268 . 125, 126
Larcombe *v.* Simey, [1907] 1 K. B. 139; 76 L. J. (K. B.) 107; 95 L. T. 874; 71 J. P. 13; 23 T. L. R. 51; 2 Smith, Reg. Cas. 1; 5 L. G. R. 17 . . 164, 172
Laskey *v.* Michelmore (1908), 98 L. T. 105; 71 J. P. 559; 24 T. L. R. 61; 6 L. G. R. 74; 2 Smith, Reg. Cas. 63. 174
Launceston Case (1874), 2 O'M. & H. 129 282
Lawe *v.* Maillard (1869), L. R. 4 C. P. 547; 38 L. J. (C. P.) 179 256
Lawson *v.* Chester Master, [1893] 1 Q. B. 245; 62 L. J. (Q. B.) 231; 68 L. T. 60; 57 J. P. 806; 41 W. R. 221; 5 R. 152 438
Layton and Woolbridge, *Ex parte* Kew Bridge Division Case. *See* Kew Bridge Division Case, *Ex parte* Layton and Woolbridge.
Leamington Case (1909), 44 L. J. 662 300
Lee *v.* Hutchinson (1850), 8 C. B. 16; 20 L. J. (C. P.) 4; 2 Lut. Reg. Cas. 159 151, 255
Leeds Institute of Science, Art and Literature and Leeds City Council, *Re*, [1909] 1 Ch. 500; 78 L. J. (CH.) 321; 100 L. T. 468; 73 J. P. 201; 25 T. L. R. 297; 7 L. G. R. 912 17
Legh *v.* Lewis (1801), 1 East, 391; affirmed Lewis *v.* Legh (1802), 3 Bos. & P. 231 125, 126
Leicester Borough Case (1853), Report of Select Committees, Minutes of Evidence, p. 52 449
Lenanton, *Ex parte*, *Ex parte* Pierce (1889), 53 J. P. 263 400, 403
Lenham *v.* Barber (1883), 10 Q. B. D. 293; 52 L. J. (Q. B.) 312; 48 J. P. 23; 31 W. R. 428 423, 424
Lennssen *v.* Thornton (1887), 3 T. L. R. 657 123
Leominster Borough Case (1796), 2 Peck. 391 446
Leonard *v.* Alloways (1878), 48 L. J. (Q. B.) 81; 40 L. T. 197; 2 Hop. & Colt. 411 206, 227, 228
———— *v.* M'Conn (1888) 1 Laws. Reg. Cas. 87 162
Lewis *v.* Evans (1874), L. R. 10 C. P. 297; 44 L. J. (C. P.) 41; 31 L. T. 487; 23 W. R. 244; 2 Hop. & Colt. 279 216
—— *v.* Roberts (1861), 11 C. B. (N. S.) 23; K. & G. 402; 31 L. J. (C. P.) 51; 5 L. T. 351; 8 Jur. (N. S.) 485; 10 W. R. 80 215
Lichfield (1880), 3 O'M. & H. 136. 472, 473
———— Borough Case (1869), 1 O'M. & H. 22 . 272, 279, 283, 286, 446, 449, 460
—— —— Case (1896), Day, 76 402
———— Division Case (1895), 5 O'M. & H. 27 263, 266, 287, 294, 298, 302, 303, 433

PAGE
Lichfield, Chidlow's (John) Case (1842), Bar. & Aust. 344 179
Lilly *v.* Corne (1774), 1 Selwyn, Nisi Prius, ed. 1810, p. 678, n. 283
Limerick Borough Case (1869), 1 O'M. & H. 260 474
Line *v.* Warren (1884), 14 Q. B. D. 73; 54 L. J. (Q. B.) 146; 52 L. T. 258; 33 W. R. 212 342
—— *v.* —— (1885), 14 Q. B. D. 548; 54 L. J. (Q. B.) 291; 53 L. T. 446; 49 J. P. 516, C. A. 417, 437, 487, 512
Linforth *v.* Butler, [1899] 1 Q. B. 116; 68 L. J. (Q. B.) 3; 79 L. T. 498; 47 W. R. 141; 15 T. L. R. 34; 1 Smith, Reg. Cas. 162 212
Lingfield Division Election, *Re*, *Ex parte* Birley (1889), 5 T. L. R. 220 . . 402
Lisburn Case (1863), Wolf. & B. 221 283
Liskeard Case (1804), 2 Peck. 324 532
Little *v.* Penrith Overseers (1872), L. R. 8 C. P. 259; 42 L. J. (C. P.) 28; 27 L. T. 552; 21 W. R. 122; 2 Hop. & Colt. 26 157, 170
Llanbadarnfawr School Board *v.* Official Trustees of Charitable Funds, [1901] 1 K. B. 430; 70 L. J. (K. B.) 307; 84 L. T. 311; 49 W. R. 363, C. A. . 28
Llandovery Division Election, *Re*, *Ex parte* Dinevor (Lord) (1889), 5 T. L. R. 221 402
Lofthouse *v.* Wharton (1808), 1 Camp. 550, n. 280
London and North Western Railway *v.* Evans, [1893] 1 Ch. 16; 62 L. J. (CH.) 1; 67 L. T. 630; 41 W. R. 149; 2 R. 120, C. A. 585
—— *v.* Eversheed (1878), 3 App. Cas. 1029; 48 L. J. (Q. B.) 22; 39 L. T. 306; 26 W. R. 863 589
London (City) Corporation *v.* County of London Electric Supply Co., Ltd. (1910) 128 L. T. Jo. 592 620
London County Council *v.* District Surveyors' Association, [1909] 2 K. B. 138; 78 L. J. (K. B.) 729; 100 L. T. 890; 73 J. P. 291; 25 T. L. R. 463; 7 L. G. R. 569 577
—— *v.* Hearn (1909), 78 L. J. (K. B.) 414; 100 L. T. 438; 73 J. P. 211; 25 T. L. R. 303; 7 L. G. R. 312 56, 58
—— *v.* Wandsworth Borough Council, [1903] 1 K. B. 797; 72 L. J. (K. B.) 399; 88 L. T. 783; 67 J. P. 215; 51 W. R. 499; 19 T. L. R. 372; 1 L. G. R. 462, C. A. 583
London, Deptford and Greenwich Tramways Co. *v.* London County Council, [1905] 1 K. B. 316; 74 L. J. (K. B.) 172; 92 L. T. 202; 69 J. P. 67; 53 W. R. 303; 21 T. L. R. 163; 3 L. G. R. 139; 20 Cox, C. C. 795 . . . 602
London Electric Supply Corporation *v.* Brickwell (1902), *Times*, 24th February 588
——, Ltd. *v.* Priddis (1901), 18 T. L. R. 64 . 588
London School Board, *Ex parte*, *Re* Murphy. *See* Murphy, *Re*, *Ex parte* London School Board.
—— *v.* Duggan (1883), 13 Q. B. D. 176; 53 L. J. (M. C.) 104; 48 J. P. 742; 32 W. R. 768 60
—— *v.* Faulconer (1878), 8 Ch. D. 571; 48 L. J. (CH.) 41; 38 L. T. 636; 26 W. R. 652 28
—— *v.* Jackson (1881), 7 Q. B. D. 502; 50 L. J. (M. C.) 134; 45 J. P. 750; 30 W. R. 47 55, 56, 60
—— *v.* Wood (1885), 15 Q. B. D. 415; 54 L. J. (M. C.) 145; 54 L. T. 88; 50 J. P. 54 60
—— *v.* Wright (1884), 12 Q. B. D. 578; 53 L. J. (Q. B.) 266; 50 L. T. 606; 48 J. P. 484; 32 W. R. 577, C. A. 31, 60, 123
London Street Tramways Co. *v.* London County Council, [1894] A. C. 489; 63 L. J. (Q. B.) 769; 71 L. T. 301; 6 R. 317, C. A. 602
Londonderry Case (1869), 1 O'M. & H. 274 271, 282, 425, 446, 474
—— City Case (1886). 4 O'M. & H. 96 287, 314, 455, 459
—— Petition (1869), 19 L. T. 573 423
Long's Case (1571), Journals of the House of Commons of May; 2 Doug. El. Cas. 402 529
Long Sutton School Board Election Petition, *Re* (1898), 62 J. P. 566 . 474, 476
Longford Case (1870), 2 O'M. & H. 6, 15 273, 290, 292, 425, 447
Lord *v.* Fox, [1892] 1 Q. B. 199; 61 L. J. (Q. B.) 60; 65 L. T. 617; Fox & S. Reg. 266 226, 237, 255
Louth County Case (1880), 3 O'M. & H. 161 472
Lovell *v.* Callaghan, [1894] 2 I. R. 346 185
Loveridge *v.* Gardom, Gillo's Case (1899), 15 T. L. R. 282; 1 Smith, Reg. Cas. 186 166
—— *v.* —— Matthews' Case (1899), 15 T. L. R. 282; 1 Smith, Reg. Cas. 187 167
Lovering *v.* Dawson (No. 1) (1875), L. R. 10 C. P. 711; 44 L. J. (C. P.) 321...416, 417

PAGE
Lovering *v.* Dawson (No. 2) (1875), L. R. 10 C. P. 726; 44 L. J. (C. P.) 321; 32 L. T. 819 477, 520
Lowcock *v.* Broughton Overseers (1883), 12 Q. B. D. 369; 53 L. J. (Q. B.) 144; 51 L. T. 399; 32 W. R. 247; Colt. 335 148, 255
Lowestoft Division Case, *Ex parte* Crossley (Sir. S.) (1887), 4 T. L. R. 38 . 405
Luckett *v.* Knowles (1845), 2 C. B. 187; Bar. & Arn. 730; 15 L. J. (C. P.) 87; 10 Jur. 99; 1 Lut. Reg. Cas. 451 225
——— *v.* Voller (1861), K. & G. 371; 11 C. B. (N. S.) 1; 31 L. J. (C. P.) 43; 5 L. T. 312; 8 Jur. (N. S.) 676; 10 W. R. 105 251
Ludgershall Borough Case (1791), 46 Commons' Journals, p. 411 . . . 435
Lyme Regis Case (1848), 1 Pow. R. & D. 25 282
Lynch *v.* Wheatley (1884), 14 Q. B. D. 504; 54 L. J. (Q. B.) 289; 53 L. T. 49; Colt. 364 225

M.

M'BRIDE *v.* Bryans, [1908] 2 I. R. 329, C. A. 169, 170
M'Clean *v.* Prichard (1887), 20 Q. B. D. 285; 58 L. T. 337; 52 J. P. 519; 36 W. R. 508; Fox & S. Reg. 94 161, 189
M'Clory *v.* Wright (1860), 10 I. C. L. R. 514 286
M'Crea *v.* Buchanan (1889), [1898] W. N. 112 176
M'Creery *v.* Hanrahan (1887), 1 Laws. Reg. Cas. 256 142
McCullagh *v.* Graham (1890), 1 Laws. Reg. Cas. 36 164
M'Daid *v.* Bulmer, [1907] 2 I. R. 345 173
——— *v.* Chambers, Keown's Case (1893), 29 I. L. T. 81, C. A. . . . 248
McDermott *v.* Chambers (1887), 22 L. R. Ir. 432 143
Macdonald *v.* Dickson (1888), [1897] W. N. 123 175
McFarland *v.* Burnett (1890), 1 Laws. Reg. Cas. 286, C. A. 212
M'Gaffigan *v.* Riddall (1890), 28 L. R. Ir. 257 171
McGrorey *v.* Chambers, [1894] 2 I. R. 129, C. A. 206
McHarg *v.* Universal Stock Exchange, [1895] 2 Q. B. 81; 64 L. J. (Q. B.) 498; 72 L. T. 602; 43 W. R. 464; 15 R. 459 460
McIntosh *v.* Chambers (1894), 2 Laws. Reg. Cas. 45, C. A. 249
McIver & Co., Ltd. *v.* Tate Steamers, Ltd., [1902] 2 K. B. 184; 71 L. J. (K. B.) 717; 87 L. T. 320; 50 W. R. 642; 18 T. L. R. 653, C. A. . . . 477, 521
Mackay *v.* McGuire, [1891] 1 Q. B. 250; 60 L. J. (Q. B.) 24; 64 L. T. 83; 55 J. P. 214; 39 W. R. 109; Fox & S. Reg. 201 162, 167
Mackinnon *v.* Clark, [1898] 2 Q. B. 251; 67 L. J. (Q. B.) 763; 79 L. T. 83; 47 W. R. 19; 14 T. L. R. 485, C. A. 335, 336, 398, 406, 414
McLaren *v.* Home (1881), 7 Q. B. D. 477; 50 L. J. (Q. B.) 658; 45 L. T. 350; 30 W. R. 85 478, 479
M'Laughlin *v.* Chambers, [1896] 2 I. R. 497, C. A. 169
——— *v.* Swan, [1909] 2 I. R. 48, C. A. 225
M'Quade *v.* Charlton, [1904] 2 I. R. 383, C. A. 173, 174
Maddock *v.* Wallasey Local Board (1886), 55 L. J. (Q. B.) 267; 50 J. P. 404 . 549
Madge *v.* Debenture Corporation (1896), 12 T. L. R. 203 599
Magarill *v.* Whitehaven Overseers (1885), 16 Q. B. D. 242; 55 L. J. (Q. B.) 38; 53 L. T. 667; 49 J. P. 743; 34 W. R. 275; Colt. 448 142, 143
Magee *v.* Mark (1861), 11 I. R. C. L. 449 287
Maidstone Borough Case (1906), 5 O'M & H. 200 . . 263, 265, 266, 272, 288, 442, 443, 448, 449, 453
——— Case (1901), 5 O'M. & H. 149 280, 432, 444, 450
——— (1906) (not reported) 438
Major *v.* Shrewsbury Town Clerk, [1909] 1 K. B. 348; 78 L. J. (K. B.) 108; 99 L. T. 855; 73 J. P. 26; 7 L. G. R. 65; 2 Smith, Reg. Cas. 114 . . 229
Malcolm *v.* Browne (1894), [1897] W. N. 124; 22 R. (Ct. of Sess.) 188 . . 177
——— *v.* Parry (1874) L. R. 9 C. P. 610; 43 L. J. (C. P.) 321; 32 L. T. 819 . 287, 456, 458
——— *v.* ——— (No. 2) (1875), L. R. 10 C. P. 168; 44 L. J. (C. P.) 121; 31 L. T. 845; 23 W. R. 322 265, 271
Maldon Borough Petition (1853), 2 Pow. R. & D. 143 437
——— Case (1857), Wolf & D. 162 287
Mallow Case (1870), 2 O'M. & H. 18, 21 272, 283, 448
Manchester Carriage and Tramways Co., Ltd. *v.* Swinton and Pendlebury Urban Council, [1906] A. C. 277; 75 L. J. (K. B.) 839; 93 L. T. 821; 70 J. P. 81 22 T. L. R. 154; 4 L. G. R. 214 601, 602

PAGE
Manchester Carriage and Tramways Co., Ltd., and Manchester Corporation, *Re* (1902), 87 L. T. 504; 67 J. P. 14; 18 T. L. R. 779; affirmed (1903) 19 T. L. R. 439, C. A. 601
Manchester Eastern Division Case (1892), 4 O'M. & H. 120 . . 303, 425, 426
Mansel *v.* Griffin, [1908] 1 K. B. 160; 98 L. T. 51; 72 J. P. 6; 24 T. L. R. 67; affirmed [1908] 1 K. B. 947; 77 L. J. (K. B.) 676; 97 L. T. 132; 72 J. P. 179; 24 T. L. R. 431; 52 Sol. Jo. 376; 6 L. G. R. 548, C. A. . . 123, 124
Manvers (Lord), *Ex parte*, Edwinstowe Division Case. *See* Edwinstowe Division Case, *Ex parte* Manvers (Lord).
Marriage, Neave & Co., *Re*, North of England Trustee, Debenture and Assets Corporation *v.* Marriage, Neave & Co., [1896] 2 Ch. 663; 65 L. J. (CH.) 839; 75 L. T. 169; 60 J. P. 805; 45 W. R. 42, C. A. 599
Marsh *v.* Bantoft (1902), 88 L. T. 230; 67 J. P. 12; 51 W. R. 155; 19 T. L. R. 36; 1 Smith, Reg. Cas. 289; 1 L. G. R. 106 165
——— *v.* Estcourt (1889), 24 Q. B. D. 147; 59 L. J. (Q. B.) 100; 54 J. P. 294; 38 W. R. 495; Fox & S. Reg. 157 168, 173, 187
Marshall *v.* Bown (1845), 7 Man. & G. 188; 8 Scott (N. R.), 899; 14 L. J. (C. P.) 129; 9 Jur. 164; 1 Lut. Reg. Cas. 278 153
——— *v.* Graham, [1907] 2 K. B. 112; 76 L. J. (K. B.) 690; 97 L. T. 52; 71 J. P. 270; 23 T. L. R. 435; 5 L. G. R. 738 30, 60, 61
——— *v.* James (1874), L. R. 6 C. P. 702; 43 L. J. (C. P.) 281; 30 L. T. 559; 22 W. R. 738 435, 463, 480
Martin *v.* Hanrahan (1888), [1897] W. N. 103; 24 L. R. Ir. 127 164
——— *v.* Tomkinson, [1893] 2 Q. B. D. 121; 62 L. J. (Q. B.) 400; 69 L. T. 285; 57 J. P. 725; 5 R. 411 335
Marton *v.* Gorrill (1889), 23 Q. B. D. 139; 58 L. J. (Q. B.) 329; 60 L. T. 867 . 273
Mashiter *v.* Dunn (1848), 6 C. B. 30; 2 Lut. Reg. Cas. 112; 18 L. J. (C. P.) 13 144, 255
Maslyn's Case (1873), 2 O'M. & H. 63 292
Mason, *Ex parte*, *Re* Smith. *See* Smith, *Re*, *Ex parte* Mason.
Mather *v.* Allendale Overseers (1870), L. R. 6 C. P. 272; 40 L. J. (C. P.) 76; 23 L. T. 539; 19 W. R. 284; 1 Hop. & Colt. 461 224
——— *v.* Brown (1876) 1 C. P. D. 596; 45 L. J. (C. P.) 547; 34 L. T. 869; 24 W. R. 736 274
——— *v.* Laurence, [1899] 1 Q. B. 1000; 68 L. J. (Q. B.) 714; 80 L. T. 600; 47 W. R. 559; 15 T. L. R. 347; 19 Cox, C. C. 300 63
Matthews, *Ex parte*, (1886) 2 T. L. R. 548 406
Matthews' Case, Loveridge *v.* Gordon. *See* Loveridge *v.* Gordon, Matthews' Case.
Maude *v.* Lowley (1874), L. R. 9 C. P. 165; 43 L. J. (C. P.) 103; 30 L. T. 168; 22 W. R. 649 413, 423
Mayo County Case (1857), Wolf. & D. 1 442
Measom, *Ex parte*, *Re* Isleworth Division Election. *See* Isleworth Division Election, *Re*, *Ex parte* Measom.
Meath Northern Division Case (1892), 4 O'M. & H. 185 292, 474
——— Southern Division Case (1892), 4 O'M. & H. 130 292, 474
Meek *v.* Langdon (1862), 37 L. T. Jo. 181 642
Melbourne *v.* Greenfield (1859), 7 C. B. (N. S.) 1; K. & G. 261; 29 L. J. (C. P.) 81; 1 L. T. 93; 6 Jur. (N. S.) 510; 8 W. R. 67 211, 212
Mellor *v.* Denham (1879), 4 Q. B. D. 241; 48 L. J. (M. C.) 113; 40 L. T. 395; 27 W. R. 496 61
Metropolitan Asylums District *v.* Hill (1881), 6 App. Cas. 193; 50 L. J. (Q. B.) 353; 44 L. T. 653; 45 J. P. 664; 29 W. R. 617 563
Metropolitan Electric Supply Co., Ltd. *v.* Ginder, [1901] 2 Ch. 799; 70 L. J. (CH.) 862; 84 L. T. 818; 65 J. P. 519; 49 W. R. 508; 17 T. L. R. 435 589
——— *v.* St. Marylebone Corporation (1903), 67 J. P. 382; (1904) 2 L. G. R. 419 554
Meyricke Fund, *Re* (1872), 7 Ch. App. 500; 41 L. J. (CH.) 553; 26 L. T. 596; 20 W. R. 715 102
Middlesex Case (1804), 2 Peck. 118 140
Midwood & Co., Ltd. *v.* Manchester Corporation, [1905] 2 K. B. 597; 74 L. J. (K. B.) 884; 93 L. T. 525; 69 J. P. 348; 54 W. R. 37; 21 T. L. R. 667; 3 L. G. R. 1136, C. A. 564, 565, 576
Mile End Union *v.* Hoare, [1903] 2 K. B. 483; 72 L. J. (K. B.) 651; 89 L. T. 276; 67 J. P. 395; 19 T. L. R. 606; 20 Cox, C. C. 536 644
Miller *v.* Everton (1895), 11 T. L. R. 364 274

PAGE
Mills *v.* Cobb (1866), L. R. 2 C. P. 95 ; 36 L. J. (C. P.) 75 ; 15 L. T. 469 ; 12 Jur. (N. S.) 1007 ; 15 W. R. 224 148, 150
Milne *v.* Brunton, [1909] S. C. 912 167, 169
—— *v.* Murray, [1907] S. C. 396 167
Milward *v.* Barry Urban Council, [1904] 2 Ch. 481 ; 73 L. J. (CH.) 804 ; 91 L. T. 290 ; 68 J. P. 569 ; 53 W. R. 21 ; 20 T. L. R. 705 20
———— *v.* Sargeant (1786), 1 East, 563, n. 312, 537
Minifie *v.* Banger (1885), 16 Q. B. D. 302 ; 55 L. J. (Q. B.) 10 ; 53 L. T. 590 ; 50 J. P. 131 ; Colt. 493, C. A. 225, 256
Mitchell's Case (1696), Lud. E. C. 456 418
Monaghan's Case, Torish *v.* Clarke. *See* Torish *v.* Clarke, Monaghan's Case.
Monks *v.* Jackson (1876), 1 C. P. D. 683 ; 46 L. J. (C. P.) 162 ; 35 L. T. 95 . 274, 343, 412, 487
Monkswell (Lord) *v.* Thompson, [1898] 1 Q. B. 479 ; 67 L. J. (Q. B.) 378 ; 78 L. T. 116 ; 62 J. P. 212 ; 46 W. R. 382 ; 14 T. L. R. 224 459
Monmouth Boroughs Case (1901), 5 O'M & H. 166 . . . 297, 299, 444, 450
———— Case (1835), Kn. & Omb. 408 289
Montefiore, *Ex parte* (1888), 5 T. L. R. 78 402
Montgomery, *Ex parte*, Brentwood Case. *See* Brentwood Case, *Ex parte* Montgomery.
Montgomery Boroughs Case (1892), 4 O'M. & H. 167 ; Day, 14, 150 . 265, 284, 290, 291, 425, 431, 441, 442, 443, 448, 449, 461, 474
Montreal Municipality *v.* Standard Light and Power Co. (1897), 66 L. J. (P. C.) 113 575
Moon *v.* Andrew (1868), L. R. 4 C. P. 461 ; 38 L. J. (C. P.) 97 ; 19 L. T. 452 ; 1 Hop. & Colt. 75 213
Moore *v.* Atkinson (1890), Fox & S. Reg. 185 255
—— *v.* Carisbrooke Overseers (1852), 12 C. B. 661 ; 22 L. J. (C. P.) 64 ; 17 Jur. 116 ; 1 W. R. 67 ; 2 Lut. Reg. Cas. 233 151
—— *v.* Kennard (1883), 10 Q. B. D. 290 ; 52 L. J. (Q. B.) 285 ; 48 L. T. 236 ; 47 J. P. 343 ; 31 W. R. 610 429, 430
—— *v.* Lambeth Waterworks Co. (1886), 17 Q. B. D. 462 ; 55 L. J. (Q. B.) 304 ; 55 L. T. 309 ; 50 J. P. 756 ; 34 W. R. 559, C. A. 577
Moorehouse *v.* Gilbertson (1853), 14 C. B. 70 ; 2 C. L. R. 38 ; 23 L. J. (C. P.) 19 ; 17 Jur. 1184 ; 2 W. R. 58 ; 2 Lut. Reg. Cas. 260 151
———— *v.* Linney (1885), 15 Q. B. D. 273 ; 53 L. T. 343 ; 49 J. P. 471 ; 33 W. R. 704 275
Moran *v.* Marsland, [1909] 1 K. B. 744 ; 78 L. J. (K. B.) 346 ; 100 L. T. 374 ; 73 J. P. 114 ; 25 T. L. R. 235 ; 7 L. G. R. 493 577
Morfee *v.* Novis (1881), 8 Q. B. D. 195 ; 51 L. J. (Q. B.) 183 ; 46 L. T. 253 ; 45 J. P. 847 ; 30 W. R. 823 ; Colt. 163, C. A. 169
Morgan *v.* Parry (1856), 17 C. B. 334 ; 25 L. J. (C. P.) 141 ; 2 Jur. (N. S.) 285 ; 4 W. R. 286 203, 204
Morish (or Norrish) *v.* Harris (1866), L. R. 1 C. P. 155 ; 35 L. J. (C. P.) 101 ; 14 L. T. 764 ; 12 Jur. (N. S.) 627 ; 14 W. R. 479 ; 1 Har. & Ruth. 358 ; Hop. & Ph. 305 161, 186
Morris *v.* Burdett (1813), 2 M. & S. 212 264
—— *v.* Carnarvon County Council, [1910] 1 K. B. 159 ; 72 L. J. (K. B.) 169 ; 101 L. T. 914 ; 26 T. L. R. 137 33
—— *v.* Shrewsbury Town Clerk, [1909] 1 K. B. 342 ; 78 L. J. (K. B.) 234 ; 99 L. T 964 ; 73 J. P. 28 ; 7 L. G. R. 125 ; 21 Cox, C. C. 751 ; 2 Smith, Reg. Cas. 123 518, 525
—— and Bastert, Ltd. *v.* Loughborough Corporation, [1908] 1 K. B. 205 ; 77 L. J. (K. B.) 91 ; 98 L. T. 269 ; 71 J. P. 521 ; 6 L. G. R. 55, C. A. . 588, 592
Mortlock *v.* Farrer (1879), 5 C. P. D. 73 ; 49 L. J. (C. P.) 160 ; 41 L. T. 470 ; 28 W. R. 395 213
Morton *v.* Bank of England, [1904] 1 Ch. 664 ; 73 L. J. (CH.) 503 ; 90 L. T. 375 ; 68 J. P. 268 ; 52 W. R. 393 ; 20 T. L. R. 230 85
Moufflet *v.* Cole (1872), L. R. 8 Exch. 32 ; 42 L. J. (EX.) 8 ; 27 L. T. 678 ; 21 W. R. 175 590
Mount Argus Case, Alexander *v.* Bourke. *See* Alexander *v.* Bourke, Mount Argus Case.
Munro *v.* Balfour, [1893] 1 Q. B. 113 ; 67 L. T. 526 ; 57 J. P. 789 ; 41 W. R. 143. 424, 426, 427
Murphy, *Re*, *Ex parte* London School Board (1877), 2 Q. B. D. 397 ; 46 L. J. (M. C.) 193 ; 36 L. T. 698 ; 23 W. R. 536 66
Murray *v.* Thornley (1846), 2 C. B. 217 ; 15 L. J. (C. P.) 155 ; 10 Jur. 270 ; 1 Lut. Reg. Cas. 496 ; Bar. & Arn. 742 148
Myddleton *v.* Wynn (1746), Willes, 397 332

N.

PAGE
NAGLE *v.* Campbell, [1896] 2 I. R. 326, C. A. 208, 226
Nairn *v.* St. Andrews University, [1909] A. C. 147 ; 78 L. J. (P. C.) 54 ; 100 L. T. 96 ; 25 T. L. R. 160 ; 53 Sol. Jo. 161 ; [1909] S. C. (H. L.) 10 ; 46 Sc. L. R. 132 140, 248
National Society *v.* London School Board (1874), L. R. 18 Eq. 608 ; 44 L. J. (CH.) 229 ; 31 L. T. 22 ; 23 W. R. 2 28
National Telephone Co. *v.* Baker, [1893] 2 Ch. 186 ; 62 L. J. (CH.) 699 ; 68 L. T. 283 ; 57 J. P. 373 583
Neild *v.* Batty (1874), L. R. 9 C. P. 104 ; 43 L. J. (C. P.) 73 ; 29 L. T. 747 ; 22 W. R. 407 427
Nell *v.* Longbottom, [1894] 1 Q. B. 767 ; 63 L. J. (Q. B.) 490 ; 70 L. T. 499 ; 10 R. 193 353
Nettleton *v.* Burrell (1844), 7 Man. & G. 35 ; Bar. & Arn. 297 ; 2 Dow. & L. 598 ; 8 Scott (N. R.), 738 ; 14 L. J. (C. P.) 37 ; 8 Jur. 1033 ; 1 Lut. Reg. Cas. 157 249
New Swindon Case, *Ex parte* Hinton (1889), 5 T. L. R. 195 403
New Windsor Borough Case (1804), 2 Peck. 187 453
——— Case (1835), Kn. & Omb. 139 289
Newbury Case, *Ex parte* Byrch (1889), 5 T. L. R. 195 401
Newcastle-under-Lyme Case (1842), Bar. & Aust. 436 284
——— (No. 2) (1842), Bar. & Aust. 564 306
Newman, *Ex parte*, *Re* Phillip's Charity. *See* Phillip's Charity, *Re*, *Ex parte* Newman.
Newton *v.* Crowley Overseers (1846), 2 C. B. 207 153
——— *v.* Mobberley Overseers (1846), 2 C. B. 203 ; 15 L. J. (C. P.) 154 ; 10 Jur. 318 ; Bar. & Arn. 695 ; 1 Lut. Reg. Cas. 427 153, 251
Nicholls *v.* Bulwer (1870), L. R. 6 C. P. 281 ; 40 L. J. (C. P.) 82 ; 23 L. T. 542 ; 19 W. R. 282 ; 1 Hop. & Colt. 472 225, 228
Nicholson *v.* Yeoman (1889), 24 Q. B. D. 145 ; 59 L. J. (Q. B.) 104 ; 61 L. T. 813 ; 54 J. P. 166 ; Fox & S. Reg. 150 165, 174
Normanton Gas Co. *v.* Pope (1883), 52 L. J. (Q. B.) 629 ; 49 L. T. 798 ; 32 W. R. 134, C. A. 585
Norris, *Ex parte*, R. *v.* London County Council. *See* R. *v.* London County Council, *Ex parte* Norris.
——— *v.* Pilcher (1868), L. R. 4 C. P. 417 ; 38 L. J. (C. P.) 69 ; 19 L. T. 563 ; 17 W. R. 225 ; 1 Hop. & Colt. 173 214, 248
Norrish (or Morish) *v.* Harris (1866), L. R. 1 C. P. 155 ; 35 L. J. (C. P.) 101 ; 14 L. T. 764 ; 12 Jur. (N. S.) 627 ; 14 W. R. 479 ; 1 Har. & Ruth. 358 ; Hop. & Ph. 305 161, 186
North Durham County Case (1874), 2 O'M. & H. 152 . . 280, 425, 443, 446, 453
——— (1874), 3 O'M. & H. 1 449
North London Rail. Co. *v.* Great Northern Rail. Co. (1883), 11 Q. B. D. 30 ; 52 L. J. (Q. B.) 380 ; 48 L. T. 695 ; 31 W. R. 490, C. A. 540
North Meath Case (1892), Day, 141 281, 433
North Metropolitan Tramways Co., Ltd. *v.* London County Council (1895), 60 J. P. 23, C. A. 602
——— *v.* Leyton Urban District Council (1907), 71 J. P. 536 ; affirmed (1908) 98 L. T. 792 ; 72 J. P. 241 ; 6 L. G. R. 627, C. A. 601
North Norfolk Case (1869), 1 O'M. & H. 236 . . . 270, 272, 273, 284, 441
North of England Trustee, Debenture and Assets Corporation *v.* Marriage, Neave & Co., *Re* Marriage, Neave & Co. *See* Marriage, Neave & Co., *Re*, North of England Trustee, Debenture and Assets Corporation *v.* Marriage, Neave & Co.
Northallerton Case (1869), 1 O'M. & H. 167 288, 429, 454
Northcote *v.* Pulsford (1875), L. R. 10 C. P. 476 ; 44 L. J. (C. P.) 217 ; 32 L. T. 602 ; 23 W. R. 700 275
Norton *v.* Salisbury Town Clerk (1846), 4 C. B. 32 ; 16 L. J. (C. P.) 9 ; 10 Jur. 971 ; 1 Lut. Reg. Cas. 544, n. 251
Norwich Case (1859), Wolf. & B. 58 284
——— (1869), 1 O'M. & H. 8 270, 272, 440, 447
——— (1871), 2 O'M. & H. 38 271, 283, 286
——— (1886), 4 O'M. & H. 84 . . 264, 265, 266, 271, 290, 297, 298, 400, 403, 405, 406, 461, 473, 475
——— Election Petition (1869), 19 L. T. (N. S.) 615 454
——— (1870), 22 L. T. 101 478

PAGE
Norwich Election Petition, Birkbeck *v.* Bullard (1886), 80 L. T. Jo. 253 . 413, 426
Noseworthy *v.* Buckland-in-the-Moor (1873), L. R. 9 C. P. 233; 13 L. J. (C. P.) 27; 29 L. T. 675; 22 W. R. 155; 2 Hop. & Colt. 127 214
Nott *v.* Williams (1900), 48 W. R. 316 35
Nottingham Case (1802), 1 Peck. 77 281
———— 2nd Case (1843), Bar. & Arn. 192 446, 449
Nunn *v.* Denton (1844), 7 Man. & G. 66; 8 Scott (N. R.), 794; Bar. & Arn. 324; 14 L. J. (C. P.) 43; 8 Jur. 1102; 1 Lut. Reg. Cas. 178 . . . 161, 185, 253
Nurton *v.* Dickson (1860), 5 H. & N. 637; 29 L. J. (EX) 337; 6 Jur. (N. S.) 708; 8 W. R. 530 301

O.

OAKE, *Ex parte* (1904), *Times*, August 10th 477
O'Brien *v.* Fenton (1864), 15 I. C. L. R. 380 206
O'Connor *v.* Holland, [1900] 2 I. R. 448 165
——— *v.* Nicholson (1891), Fox & S. Reg. 250 222, 249
Okehampton Case (1833), 1 Peck. 373 143
Oldham Corporation *v.* Bank of England, [1904] 2 Ch. 716; 73 L. J. (CH.) 785; 91 L. T. 582; 68 J. P. 584; 53 W. R. 243; 20 T. L. R. 787, C. A. 25
——— Case (1869), 1 O'M. & H. 151 . . . 143, 144, 286, 318, 455, 456, 473
——— Municipal Election, *Re*, Cooper *v.* Ogden (1908), 72 J. P. 115; 24 T. L. R. 242; 52 Sol. Jo. 192; 6 L. G. R. 373 327, 328
Olive *v.* Ingram (1739), 7 Mod. Rep. 263; 2 Stra. 1114 140
O'Neill's Case, Holland *v.* Chambers. *See* Holland *v.* Chambers, O'Neill's Case.
Onions *v.* Bowdler (1847), 5 C. B. 65; 17 L. J. (C. P.) 70; 11 Jur. 1041; 2 Lut. Reg. Cas. 59 225
Oram *v.* Cole (1864), 18 C. B. (N. S.) 1; 1 Hop. & Ph. 87; 34 L. J. (C. P.) 52; 11 L. T. 451; 10 Jur. (N. S.) 1206; 13 W. R. 268 211
Oxford (Chancellor etc.) and Taylor, *Re* (1841), 1 Q. B. 952 92
——— Case (1833), Cockb. & Rowe, 139 282
———— (1857), 1 Wolf. & D. 106 287
———— (1880), 3 O'M. & H. 157 472
——— Election Petition, Green *v.* Hall, [1880] W. N. 146 424
Oxford Street School, Swansea (Managers), *Ex parte*, R. *v.* Board of Education. *See* R. *v.* Board of Education, *Ex parte* Oxford Street School, Swansea (Managers).

P.

PACKARD *v.* Collings (1886), 54 L. T. 619; 4 O'M & H. 84 288
Palmer *v.* Allen (1847), 5 C. B. 1; 17 L. J. (C. P.) 65; 2 Lut. Reg. Cas. 1; 11 Jur. 977 251
——— *v.* Wade, [1894] 1 Q. B. 268; 70 L. T. 407; 58 J. P. 511; 10 R. 416; Fox & S. Reg. 323 171
Passingham *v.* Pitty (1855), 17 C. B. 299; 25 L. J. (C. P.) 4; 2 Jur. (N. S.) 837; 4 W. R. 122 147, 255
Paterson *v.* Gas Light and Coke Co., [1896] 2 Ch. 476; 65 L. J. (CH.) 709; 74 L. T. 640; 60 J. P. 532; 45 W. R. 39, C. A. 599
Pearce *v.* Merriman, [1904] 1 K. B. 80; 73 L. J. (K. B.) 183; 89 L. T. 745; 68 J. P. 37; 52 W. R. 141; 20 T. L. R. 48; 1 Smith, Reg. Cas. 218; 2 L. G. R. 139 167
Pease *v.* Middlesbrough Town Clerk, [1893] 1 Q. B. 127; 62 L. J. (Q. B.) 94; 68 L. T. 766; 57 J. P. 759; 5 R. 99; Fox & S. Reg. 286 209
——— *v.* Norwood (1869), L. R. 4 C. P. 235; 38 L. J. (C. P.) 161; 19 L. T. 648; 17 W. R. 320 414, 419, 421, 494, 495
Pembroke Borough Case (1896), 5 O'M & H. 135 432
———————— (1901), 5 O'M. & H. 135 314, 445
———— Election, *Ite* (1889), 5 T. L. R. 272 403
———————— Petition (Nos. 1 and 2), [1908] 2 I. R. 433 322
———— Urban District Council Election Petition, *Ite*, [1908] 2 I. R. 158 . 430
Pennington, *Ex parte* (1898), 46 W. R. 415 336, 406
Penrhyn and Falmouth Election Petition (1870), 22 L. T. 98 478
——— Case (1869), 1 O'M. & H. 127 288, 425
Perry, *Ex parte* (1884), 48 J. P. 824 402, 403
Peterborough (City) Case (1728), 21 Commons' Journal, p. 162 418
Petersfield Case (1874), 2 O'M. & H. 94 168, 173, 454

PAGE
Petherbridge *v.* Ash (1846), 4 C. B. 74 ; 10 Jur. 950 ; 1 Lut. Reg. Cas. 507 . 251
Phillips *v.* Goff (1886), 17 Q. B. D. 805 ; 55 L. J. (Q. B.) 512 ; 50 J. P. 614 ; 35 W. R. 197 327
——— *v.* London School Board, [1898] 2 Q. B. 447 ; 67 L. J. (Q. B.) 874 ; 79 L. T. 50 ; 46 W. R. 658 ; 14 T. L. R. 501, C. A. 127
——— *v.* Salmon (1877), 3 C. P. D. 97 ; 47 L. J. (C. P.) 53 ; 37 L. T. 579 ; 2 Hop. & Colt. 339 146
Phillips' Charity, *Re*, *Ex parte* Newman (1845), 9 Jur. 959 125, 126
Pickard *v.* Baylis (1879), 5 C. P. D. 235 ; 49 L. J. (C. P.) 182 ; 41 L. T. 509 ; 44 J. P. 89 ; 28 W. R. 256 ; Colt. 98 228, 256
——— *v.* Preston (1903), 67 J. P. 13 ; 51 W. R. 156 ; 19 T. L. R. 35 ; 1 Smith, Reg. Cas. 296 ; 1 L. G. R. 110. 185
Pickard's Case (1873), 2 O'M. & H. 63 293
Pickering *v.* James (1873), L. R. 8 C. P. 489 ; 42 L. J. (C. P.) 217 ; 29 L. T. 210 ; 21 W. R. 786 312, 316, 374, 537
Pierce, *Ex parte*, *Ex parte* Lenanton. *See* Lenanton, *Ex parte*, *Ex parte* Pierce.
Piercy *v.* Maclean (1870), L. R. 5 C. P. 252 ; 1 Hop. & Colt. 371 ; 39 L. J. (C. P.) 115 ; 22 L. T. 213 ; 18 W. R. 732 160, 161, 185
Pitts *v.* Michelmore, [1909] 1 K. B. 227 ; affirmed [1909] 2 K. B. 244 ; 101 L. T. 188 ; 73 J. P. 313 ; 25 T. L. R. 492 ; 7 L. G. R. 518 ; 2 Smith, Reg. Cas. 130, C. A. 159, 165, 171
—— *v.* ——— (1910), 102 L. T. 134 165
—— *v.* Smedley (1845), 7 Man. & G. 85, n. ; 8 Scott (N. R.), 907 ; 14 L. J. (C. P.) 73 ; 9 Jur. 69 ; 1 Lut. Reg. Cas. 196 ; Bar. & Arn. 344 249, 254
Plant *v.* Potts, [1891] 1 Q. B. 256 ; 60 L. J. (Q. B.) 33 ; 63 L. T. 730 ; 55 J. P. 277 ; Fox & S. Reg. 206, C. A. 224, 225, 226
Plymouth Case (1880), 3 O'M. & H. 107 272, 282, 286, 287, 472
Points *v.* Attwood (1848), 6 C. B. 38 ; 18 L. J. (C. P.) 19 ; 13 Jur. 83 ; 2 Lut. Reg. Cas. 117 194
Pontardawe Rural Council Election Petition, [1907] 2 K. B. 313 ; 76 L. J. (K. B.) 702 ; 71 J. P. 371 ; 23 T. L. R. 538 ; 5 L. G. R. 1060 328
Pontefract Case (1893), 4 O'M. & H. 200 ; Day, 5, 11, 12, 76, 125 . 280, 302, 399, 415, 423, 426, 473
——— (1910), unreported 450
Poole Borough Case (1874), 2 O'M. & H. 123 438, 451, 474
Pope *v.* Bruton (1900), 17 T. L. R. 182 436, 486, 492, 500
Poplar and Blackwall Free School, *Re* (1878), 8 Ch. D. 543 ; 39 L. T. 88 ; 26 W. R. 827. 28
Port Soken Ward Case (1906), *Times*, January 24th 138
Portsmouth Corporation *v.* Smith (1885), 10 App. Cas. 364 ; 54 L. J. (Q. B.) 473 ; 53 L. T. 394 ; 49 J. P. 676 573, 613
Powell *v.* Boraston (1865), 18 C. B. 175 ; 34 L. J. (C. P.) 73 ; Hop. & Ph. 179 ; 11 L. T. 734 ; 11 Jur. (N. S.) 160 ; 13 W. R. 465 . . . 160, 186
——— *v.* Bradley (1864), 18 C. B. (N. S.) 65 ; Hop. & Ph. 159 ; 34 L. J. (C. P.) 67 ; 11 L. T. 602 ; 10 Jur. (N. S.) 1240 ; 13 W. R. 272 . . . 139
——— *v.* Caswell (1849), 8 C. B. 14 212, 253
——— *v.* Farmer (1865), 18 C. B. (N. S.) 168 ; Hop. & Ph. 172 ; 34 L. J. (C. P.) 71 ; 11 L. T. 736 ; 11 Jur. (N. S.) 162 ; 13 W. R. 467 . . 160, 161, 248
——— *v.* Guest (1865), 18 C. B. (N. S.) 72 ; Hop. & Ph. 149 ; 34 L. J. (C. P.) 69 ; 11 L. T. 599 ; 10 Jur. (N. S.) 1238 ; 13 W. R. 274 . . 141, 164, 177
——— *v.* Jones (1864), 18 C. B. (N. S.) 83 ; Hop. & Ph. 165 ; 11 L. T. 600 ; 11 Jur. (N. S.) 17 ; 13 W. R. 273 172
——— *v.* Kempton Park Racecourse, [1899] A. C. 143 ; 68 L. J. (Q. B.) 392 ; 80 L. T. 538 ; 63 J. P. 260 ; 47 W. R. 585 ; 15 T. L. R. 266 ; 19 Cox, C. C. 265 256
——— *v.* Lee (1908), 99 L. T. 284 ; 72 J. P. 353 ; 24 T. L. R. 606 ; 9 L. G. R. 840 125
Pownall *v.* Dawson (1851), 11 C. B. 9 ; 21 L. J. (C. P.) 14 ; 16 Jur. 549 ; 2 Lut. Reg. Cas. 177 160, 186
——— *v.* Hood (1851), 11 C. B. 1 ; 21 L. J. (C. P.) 12 ; 16 Jur. 618 ; 2 Lut. Reg. Cas. 170 253
Preece *v.* Pulley, Hereford (City) Election Petition. *See* Hereford (City) Election Petition, Preece *v.* Pulley.
Prentice *v.* Markham (1893), Fox & S. Reg. Cas. 301 167
Prescott *v.* Lee, [1899] 2 Q. B. 273 ; 68 L. J. (Q. B.) 906 ; 81 L. T. 43 ; 47 W. R. 690 ; 15 T. L. R. 467 ; 1 Smith, Reg. Cas. 197, C. A. 212, 230
Price *v.* South Metropolitan Gas Co. (1895), 65 L. J (Q. B.) 126 565
—— *v.* Wilkins (1888), 58 L. T. 680 123, 124

PAGE
Prideaux *v.* Morrice (1702), 7 Mod. Rep. 14 ; 1 Lut. 82 ; Salk. 502 ; Holt (K. B.), 523 332
Pring *v.* Estcourt (1846), 4 C. B. 71 ; 16 L. J. (C. P.) 10 ; 10 Jur. 928 ; 1 Lut. Reg. Cas. 505 250
Prior *v.* Waring (1847), 5 C. B. 56 ; 17 L. J. (C. P.) 73 ; 11 Jur. 1086 ; 2 Lut. Reg. Cas. 45 252
Pritchard *v.* Bangor Corporation (1888). 13 App. Cas. 241 ; 57 L. J. (Q. B.) 313 ; 58 L. T. 502 ; 52 J. P. 564 ; 37 W. R. 103 275, 276, 343, 487
Proctor *v.* Annison (1859), 1 L. T. 187 154
Proudfoot *v.* Barnes (1866), L. R. 2 C. P. 88 ; 36 L. J. (C. P.) 68 ; 15 L. T. 439 ; 12 Jur. (N. S.) 1017 ; 15 W. R. 223 216
Pruen *v.* Cox (1845), 2 C. B. 1 ; 15 L. J. (C. P.) 17 ; 9 Jur. 994 ; Bar. & Arn. 514 ; 1 Lut. Reg. Cas. 304 212
Pryce *v.* Belcher (1847), 4 C. B. 866 ; 16 L. J. (C. P.) 264 312, 537

Q.

QUEEN'S School, Chester, *Re* (1910) 26 T. L. R. 297 9
Quigley's Case, Wansey *v.* Perkins. *See* Wansey *v.* Perkins, Quigley's Case.
Quinlan *v.* M'Carthy (1890), 28 L. R. Ir. 246, C. A. 213

R.

R. *v.* Askew (1768), 4 Burr. 2186 92
— *v.* Austin (1906), 71 J. P. 29 ; 96 L. T. 29 ; 5 L. G. R. 126 63
— *v.* Barnardo, Gossage's Case (1890), 24 Q. B. D. 283 ; 59 L. J. (Q. B.) 345 ; 38 W. R. 315, C. A. 123
— *v.* Barnwell (1857), 5 W. R. 557 292
— *v.* Beardsall (1876), 1 Q. B. D. 452 ; 45 L. J. (M. C.) 157 ; 34 L. T. 660 ; 13 Cox, C. C. 193 330, 351, 531
— *v.* Beer, [1903] 2 K. B. 693 ; 72 L. J. (K. B.) 608 ; 89 L. T. 412 ; 67 J. P. 326 ; 19 T. L. R. 531 ; 10 Mans. 263 ; 52 W. R. 221 486, 492
— *v.* Bell, *Ex parte* Kent (1907), 71 J. P. 542 ; 24 T. L. R. 66 231
— *v.* Bent (1846) 2 Car. & Kir. 179 525
— *v.* Bester (1861), 3 L. T. 667 306
— *v.* Bloomsbury County Court Judge (1886), 17 Q. B. D. 789 ; 55 L. J. (Q. B.) 443 334
— *v.* Board of Education, *Ex parte* Oxford Street School, Swansea (Managers), [1909] 2 K. B. 1045 ; 101 L. T. 301 ; 73 J. P. 469 ; 25 T. L. R. 795 ; 7 L. G. R. 929 ; affirmed (1910) 26 T. L. R. 422, C. A. . . . 8, 36, 38
— *v.* Bowler (1842), Car. & M. 559 314, 530, 532
— *v.* Bradley (1861), 3 E. & E. 634 ; 30 L. J. (Q. B.) 180 ; 3 L. T. 753 ; 7 Jur. (N. S.) 757 ; 9 W. R. 372 274
— *v.* Bridge (1813), 1 M. & S. 76 305
— *v.* Bridgnorth Corporation (1839), 10 Ad. & El. 66 ; 2 Per. & Dav. 317 ; 8 L. J. (M. C.) 86 286
— *v.* Cambridge (Vice-Chancellor) (1765) 3 Burr. 1647 92
— *v.* ———— University (1723), 8 Mod. Rep. 51 92
— *v.* ———— ———— (1794), 6 Term Rep. 104 92
— *v.* Campion (1890), 17 Cox, C. C. 120 536
— *v.* Carter (1904), 68 J. P. 466 392
— *v.* Chapin (1909), *Times*, November 25th ; 74 J. P. 71 531
— *v.* Charity Commissioners for England and Wales, [1897] 1 Q. B. 407 ; 66 L. J. (Q. B.) 321 ; 76 L. T. 199 ; 45 W. R. 336 100
— *v.* Chester Corporation (1855), 5 E. & B. 531 ; 25 L. J. (Q. B.) 61 ; 3 Jur. (N. S.) 114 486
— *v.* Clarke, [1900] 2 I. R. 304 525
— *v.* Clarkson (1892), 17 Cox, C. C. 483 ; 66 L. T. 297 ; 56 J. P. 375 300
— *v.* Cockerton, [1901] 1 Q. B. 322 ; affirmed, [1901] 1 Q. B. 726 ; 70 L. J. (K. B.) 441 ; 84 L. T. 488 ; 65 J. P. 435 ; 49 W. R. 433 ; 17 T. L. R. 402, C. A. 9, 11, 16, 29
— *v.* Corry (1804), 5 East, 372 ; 1 Smith, K. B. 358 531
— *v.* Coward (1851), 16 Q. B. 819 ; 20 L. J. (Q. B.) 359 ; 15 Jur. 726 . . . 274
— *v.* Darlington School (Governors) (1844), 6 Q. B. 682 125, 126
— *v.* Deighton (1844), 5 Q. B. 896 ; Dav. & Mer. 683 ; 13 L. J. (Q. B.) 241 ; 8 Jur. 686 274

PAGE
R. *v.* Ditcheat (Inhabitants) (1829), 9 B. & C. 176; 4 Man. & Ry. (K. B.) 151 . 161
— *v.* Dodsworth (1837), 8 C. & P. 218; 2 Jur. 131 530
— *v.* Doncaster Corporation (1828), 7 B. & C. 630; 1 Man. & Ry. (K. B.) 545; 6 L. J. (O. S.) (M. C.) 57 179
— *v.* Dudley (1840), 11 Ad. & El. 875 352
— *v.* East and West India Docks and Birmingham Junction Rail. Co. (1853), 2 E. & B. 466; 22 L. J. (Q. B.) 380; 17 Jur. 1181 561
— *v.* Ellis (1842), Car. & M. 564 314, 530
— *v.* Fox (1887), 16 Cox, C. C. 166 292, 456, 526
— *v.* Garvey (1887), 16 Cox, C. C. 252 316, 528, 529
— *v.* Gregory (1853), 1 E. & B. 600; 22 L. J. (Q. B.) 120; 17 Jur. 272; 1 W. R. 148...274
— *v.* Halesworth (Inhabitants) (1832), 3 B. & Ad. 717 144
— *v.* Hall, [1891] 1 Q. B. 747; 60 L. J. (M. C.) 124; 64 L. T. 394; 17 Cox, C. C. 278...206
— *v.* Hammond (1852), 17 Q. B. 772; 21 L. J. (Q. B.) 153; 16 Jur. 194 . . 274
— *v.* Harris (1835), 7 C. & P. 253 530
— *v.* Harrold (1872), L. R. 7 Q. B. 361; 41 L. J. (Q. B.) 173; 26 L. T. 616; 20 W. R. 328 183
— *v.* Hertford College (1878), 2 Q. B. D. 590; 3 Q. B. D. 693; 47 L. J. (Q. B.) 649; 39 L. T. 18; 27 W. R. 347, C. A. 94
— *v.* Holl (1881), 7 Q. B. D 575; 50 L. J. (Q. B.) 763, C. A. 467
— *v.* Hopley (1860), 2 F. & F. 202 124
— *v.* Ireland (1868), L. R. 3 Q. B. 130; 9 B. & S. 19; 37 L. J. (Q. B.) 73; 17 L. T. 466; 16 W. R. 358 143
— *v.* Johnson (1836), 6 Nev. & M. (K. B.) 870; 4 Ad. & El. 488; 5 L. J. (EX.) 282 138
— *v.* Kerswill, [1895] 1 Q. B. 1; 64 L. J. (M. C.) 70; 71 L. T. 574; 59 J. P. 342 43 W. R. 59; 18 Cox, C. C. 49; 10 R. 476 ; 611
— *v.* Kidderminster Corporation (1851), 2 L. J. (P. & M.) 201 161
— *v.* Kilmersdon Justices, *Ex parte* Benn (1910), March 17th (unreported) . 527
— *v.* Lambeth County Court Judge (1886), 17 Q. B. D. 96 334
— *v.* ——— (Rector) (1838), 8 Ad. & El. 356 323
— *v.* Lancaster and Warrall (1890), 16 Cox, C. C. 737 529
— *v.* Law, [1900] 1 Q. B. 605; 69 L. J. (Q. B.) 348; 82 L. T. 145; 48 W. R. 411; 16 T. L. R. 199 529
— *v.* Leatham (1861), 30 L. J. (Q. B.) 205; 3 L. T. 504; 7 Jur. (N. S.) 674; 9 W. R. 33; 3 E. & E. 658; 8 Cox, C. C. 498 467
— *v.* Lichfield Corporation (1842), 2 Q. B. 693; 2 Gal. & Dav. 10; 11 L. J. (Q. B.) 122; 6 Jur. 624 144, 183
— *v.* Liverpool Borough (Revising Barrister) and Chadwick, [1895] 1 Q. B. 155; 64 L. J. (Q. B.) 131; 71 L. T. 636; 43 W. R. 220; Fox & S. Reg. 375; 15 R. 123 235, 236, 249
— *v.* London County Council, *Ex parte* Norris, [1906] 1 K. B. 346; 75 L. J. (K. B.) 241; 94 L. T. 218; 70 J. P. 260; 54 W. R. 439; 22 T. L. R. 235; 4 L. G. R. 305...16, 17
— *v.* ——— *Ex parte* Scriven (1907), 23 T. L. R. 493 . . 17
— *v.* McGowan (1840), 11 Ad. & El. 869; 3 Per. & Dav. 557; 9 L. J. (Q. B.) 244; 4 Jur. 913 352
— *v.* McKellar, [1893] 1 Q. B. 121; 62 L. J. (Q. B.) 97; 67 L. T. 527; 57 J. P. 41; 41 W. R. 142; 5 R. 64; Fox & S. Reg. 275 228
— *v.* Maddy (1840), 11 Ad. & El. 878; 3 Per. & Dav. 563 352
— *v.* Maidenhead Corporation (1882), 9 Q. B. D. 494; 51 L. J. (Q. B.) 444; 46 J. P. 724, C. A. 488, 511
— *v.* Manchester, Sheffield, and Lincolnshire Rail. Co. (1854), 4 E. & B. 88; 1 Jur. (N. S.) 419; 2 W. R. 591 125
— *v.* Mansel-Jones (1889), 23 Q. B. D. 29; 60 L. T. 860; 53 J. P. 739; 37 W. R. 508 462
— *v.* Marshall (1787), 2 Term Rep. 2 179
— *v.* Martin (1881), 8 Q. B. D. 54; 46 J. P. 228; 51 L. J. (M. C.) 36; 45 L. T. 444; 30 W. R. 106; 14 Cox, C. C. 633 531
— *v.* Mead, [1894] 2 Q. B. 124; 63 L. J. (M. C.) 128; 70 L. T. 766; 58 J. P. 448; 42 W. R. 442; 10 R. 217 628
— *v.* ——— [1898] 1 Q. B. 110; 67 L. J. (Q. B.) 874; 77 L. T. 462; 61 J. P. 759; 46 W. R. 61; 14 T. L. R. 14; 18 Cox, C. C. 670 628
— *v.* Miles, *Ex parte* Cole (1895), 64 L. J. (Q. B.) 420; 72 L. T. 502; 59 J. P. 407; 43 W. R. 445; 15 R. 446 386, 501, 504
— *v.* Morris, *Ex parte* Broadbent (1910), 26 T. L. R. 419 56, 57
— *v.* Morton, [1892] 1 Q. B. 39; 61 L. J. (Q. B.) 39; 65 L. T. 611; 56 J. P. 105; 40 W. R. 109 353, 492
— *v.* Munday (1801), 1 East, 584 144

PAGE

R. *v.* Nash, [1900] 1 Q. B. 103 ; 69 L. J. (Q. B.) 77 ; 81 L. T. 489 ; 64 J. P. 104 ; 48 W. R. 188 ; 16 T. L. R. 17 ; 1 Smith, Reg. Cas. 217 223
— *v.* Neilan (1909), *Times*, November 25th 531
— *v.* Nepean, *Ex parte* Jenkins (1903), 52 W. R. 264 254
— *v.* Nicholetts (1836), 5 Ad. & El. 376 ; 6 Nev. & M. (K. B.) 827 . . . 350
— *v.* Norton (1886), 16 Cox, C. C. 59 529
— *v.* Owens (1859), 2 E. & E. 86 ; 28 L. J. (Q. B.) 316 ; 5 Jur. (N. S.) 764 ; 7 W. R. 566 352, 353
— *v.* Oxford University (Vice-Chancellor) (1872), L. R. 7 Q. B. 471 ; 26 L. T. 506...92
— *v.* Parkyns (1820), 3 B. & Ald. 668 394, 500
— *v.* Patrick (1667), 2 Keb. 66 ; T. Raym. 101 92
— *v.* Pembroke Corporation (1840), 8 Dowl. 302 ; 4 Jur. 317 352
— *v.* Pitt (1762), 1 Wm. Bl. 380 281
— *v.* —— and Mead (1762), 3 Burr. 1335 529
— *v.* Plenty (1869), L. R. 4 Q. B. 346 ; 9 B. & S. 386 ; 38 L. J. (Q. B.) 205 ; 20 L. T. 521 ; 17 W. R. 792 274
— *v.* Plympton (1725), 2 Ld. Raym. 1377 529
— *v.* Price (1871), L. R. 6 Q. B. 411 ; 24 L. T. 387 467
— *v.* Quinlan, [1908] 2 I. R. 155 330, 351
— *v.* Reed (Sir Charles) (1880), 5 Q. B. D. 483 ; 49 L. J. (Q. B.) 600 ; 42 L. T. 835 ; 44 J. P. 633 ; 28 W. R. 787, C. A. 51
— *v.* Ripley (1890), 16 Cox, C. C. 120 536
— *v.* St. Pancras Assessment Committee (1877), 2 Q. B. D. 581 ; 46 L. J. (M. C.) 243 ; 37 L. T. 126 ; 25 W. R. 827 161
— *v.* Shellard (1889), 23 Q. B. D. 273 ; 58 L. J. (M. C.) 142 ; 61 L. T. 120 ; 53 J. P. 821 ; 37 W. R. 706 536
— *v.* Smith and Hollis (1776), 20 State Tr. 1226 529
— *v.* Soden, [1896] 1 Q. B. 634 ; 65 L. J. (Q. B.) 501 ; 74 L. T. 520 ; 60 J. P. 390 ; 44 W. R. 449 ; 1 Smith, Reg. Cas. 77, C. A.. 220, 231, 234, 249, 254
— *v.* —— [1897] 1 Q. B. 188 ; 66 L. J. (Q. B.) 183 ; 76 L. T. 161 ; 61 J. P. 150 ; 45 W. R. 234 ; 1 Smith, Reg. Cas. 115 . . 220, 222, 231, 234, 249
— *v.* Spalding (1842), Car. & M. 568 319
— *v.* Stanley (1840), 11 Ad. & El. 882 352
— *v.* Steen, [1905] 2 I. R. 574 160
— *v.* Stewart, [1898] 1 Q. B. 552 307, 350
— *v.* Stroulger (1886), 17 Q. B. D. 327 ; 55 L. J. (M. C.) 137 ; 55 L. T. 122 ; 51 J. P. 278 ; 34 W. R. 719 ; 16 Cox, C. C. 85 529
— *v.* Tewkesbury Corporation (1868), L. R. 3 Q. B. 629 ; 37 L. J. (Q. B.) 288 ; 18 L. T. 851 ; 16 W. R. 1200 ; 9 B. & S. 683 306
— *v.* Thwaites (1853), 1 E. & B. 704 ; 22 L. J. (Q. B.) 238 ; 17 Jur. 712 . 313, 319
— *v.* Tidy, [1892] 2 Q. B. 179 ; 61 L. J. (Q. B.) 791 ; 67 L. T. 319 ; 56 J. P. 650 ; 41 W. R. 128 487
— *v.* Welshpool Corporation (1876), 35 L. T. 594 486, 487
— *v.* White (1867), L. R. 2 Q. B. 557 ; 36 L. J. (Q. B.) 267 ; 16 L. T. 828 ; 15 W. R. 988 ; 8 B. & S. 587 340, 353
— *v.* Wilkes (1770), 4 Burr. 2527 141
— *v.* Williams (1813), 2 M. & S. 141 531
— *v.* Wilson, [1888] W. N. 12 100
— *v.* Wilton Corporation (1886), 34 W. R. 273 354
— *v.* Wraith, *Ex parte* Kent County Council, [1907] 2 Q. B. 756 ; 76 L. J. (K. B.) 881 ; 97 L. T. 577 ; 71 J. P. 447 ; 5 L. G. R. 1091 . . . 48
— *v.* Yeoman (1904), 20 T. L. R. 266 529
Ramsgate Election, *Re*, *Ex parte* Hobbs (1889), 5 T. L. R. 221 402
Rapier *v.* London Tramways Co., [1893] 2 Ch. 588 ; 63 L. J. (CH.) 36 ; 69 L. T. 361 ; 2 R. 448, C. A. 563, 564
Rawlins *v.* Bremner (1846), 2 C. B. 166 153
—— *v.* West Derby Overseers (1846), 2 C. B. 72 ; 15 L. J. (C. P.) 70 ; 10 Jur. 268 ; 1 Lut. Reg. Cas. 373 ; Bar. & Arn. 599 205, 251
Reade *v.* Richards and Gardom (1899), 63 J. P. 759 223
Reading Case (1838), Falc. & Fitz. 546 140, 324
Ree's Case, Chorlton *v.* Johnson. *See* Chorlton *v.* Johnson, Ree's Case.
Reed *v.* Lamb (1860), 6 H. & N. 75 ; 29 L. J. (EX.) 452 ; 6 Jur. (N. S.) 828 . . 257
Rendall *v.* Blair (1890), 45 Ch. D. 139 ; 59 L. J. (CH.) 641 ; 63 L. T. 265 ; 38 W. R. 689 127
Rendlesham (Lord) *v.* Howard (1873), L. R. 9 C. P. 252 ; 43 L. J. (C. P.) 33 ; 29 L. T. 679 ; 22 W. R. 157 ; 2 Hop. & Colt. 175 140
Renfrew County Case (1874), 2 O'M. & H. 213 ; *sub nom.* Irving *v.* Mure (1874), 1 Ir. (Ct. of Sess.) 834 427, 428, 433, 436

PAGE
Rhondda Urban District Council and Taff Vale Rail. Co., *Re* (1908), 97 L. T. 892; 72 J. P. 45; 24 T. L. R. 168; 6 L. G. R. 131, C. A. 583
Rhyl Division Case, *Ex parte* Keatinge (1889), 5. T. L. R. 195 403
———————, *Ex parte* Thomas (1889), 60 L. T. 728, C. A. 402
Ribbans *v.* Crickett (1798), 1 Bos. & P. 264 280
Richards *v.* Kidderminster Overseers, [1896] 2 Ch. 212; 65 L. J. (CH.) 502; 74 L. T. 483; 44 W. R. 505 599
Richardson *v.* Methley School Board, [1893] 3 Ch. 510; 62 L. J. (CH.) 943; 69 L. T. 308; 42 W. R. 27; 3 R. 701 540
———— *v.* Saunders (1881), 6 Q. B. D. 313; 50 L. J. (M. C.) 65; 44 L. T. 474; 45 J. P. 344; 29 W. R. 631 60
Richmond Case (1889), 5 T. L. R. 206 402
————————, *Ex parte* Walker (1889), 22 Q. B. D. 384, C. A. 403
Richmond Gas Co., and Richmond (Surrey) Corporation, *Re*, [1893] 1 Q. B. 56; 62 L. J. (Q. B.) 172; 67 L. T. 554; 56 J. P. 776; 41 W. R. 41; 5 R. 29 . 588
Rigden *v.* Passmore-Edwards, Salisbury Case. *See* Salisbury Case, Rigden *v.* Passmore-Edwards.
Riley *v.* Crossley (1846), 2 C. B. 146; 15 L. J. (C. P.) 144; 10 Jur. 316; 1 Lut. Reg. Cas. 420; Bar. & Arn. 682 153
Risley School, *Re* (1830), 8 L. J. (O. S.) (CH.) 129 126
Roberts *v.* Drewitt (1864), 18 C. B. (N. S.) 48; Hop. & Ph. 132 150
———— *v.* Percival (1864), 18 C. B. (N. S.) 36; 34 L. J. (C. P.) 84; 11 L. T. 603; 11 Jur. (N. S.) 40; 13 W. R. 265; Hop. & Ph. 121 . . 149, 166, 256
Robinson *v.* Ainge (1869), L. R. 4 C. P. 429; 19 L. T. 644; 17 W. R. 317; 1 Hop. & Colt. 193 148
———— *v.* Dunkley (1863), 15 C. B. (N. S.) 478; 33 L. J. (C. P.) 57; 9 L. T. 481; 9 Jur. (N. S.) 1342; 12 W. R. 202; Hop. & Ph. 1 . . . 152
———— *v.* Hill (1909), 101 L. T. 573 65
Robson, *Ex parte* (1886), 18 Q. B. D. 336; 55 L. T. 813; 51 J. P. 199; 35 W. R. 290 336, 406
——— *v.* Brown (1856), 1 C. B. (N. S.) 34; 26 L. J. (C. P.) 81; 3 Jur. (N. S.) 674 252
Rochester Borough Case (1892), 2 O'M. & H. 156; Day, 11 . . 266, 272, 290, 399, 400, 404, 423, 443, 462, 474
———— Case (1835), Kn. & Omb. 114 144
Rogers *v.* Custance (1839), 2 Mood. & R. 179 429
Rolleston *v.* Cope (1870), L. R. 6 C. P. 292; 40 L. J. (C. P.) 160; 24 L. T. 390; 19 W. R. 927; 1 Hop. & Colt. 488 151
Rooke *v.* Dawson, [1895] 1 Ch. 480; 64 L. J. (CH.) 301; 72 L. T. 248; 59 J. P. 231; 43 W. R. 313; 13 R. 269 124, 127
Ross *v.* Charity Commissioners (1882), 7 App. Cas. 463; 51 L. J. (P. C.) 106; 47 L. T. 172 102, 105
Roulston *v.* Kerlin, [1908] 2 I. R. 335, C. A. 162, 229
Rowland *v.* Pritchard (1893), 62 L. J. (Q. B.) 319; 68 L. T. 586; 57 J. P. 759; Fox & S. Reg. 310; 5 R. 311 165
Royston Free Grammar School, *Re* (1839), 2 Beav. 228 125
Rushmere *v.* Isaacson, [1893] 1 Q. B. 118; 57 J. P. 790; 41 W. R. 124; 5 R. 88 424
Ryan *v.* Jenkinson (1855), 25 L. J. (Q. B.) 11 126
Rylands *v.* Fletcher (1868), L. R. 3 H. L. 330; 37 L. J. (EX.) 161; 19 L. T. 220; 1 Smith, L. C., 11th ed., 810 564, 583

S.

SAGAR *v.* Clare (1900), 82 L. T. 599; 1 Smith, Reg. Cas. 243 211
St. George's Division Case (1896), 5 O'M. & H. 89 . . . 272, 283, 287, 291, 424, 432, 454
———————— Recriminatory Case (1896) 5 O'M. & H. 103 . 298, 299, 302
St. Issels Division Election, *Re*, *Ex parte* Vickerman (1889), 5 T. L. R. 220 . 401
St. Ives Case (1775), 2 Doug. El. Cas. 389 283
———— (1875), 3 O'M. & H. 13 280
St. Leonards, Shoreditch, Parochial Schools, *Re* (1884), 10 App. Cas. 304; 56 L. J. (P. C.) 30; 51 L. T. 305; 33 W. R. 756 100, 108
Sale, *Re* (1880), 50 L. J. (Q. B.) 113; 43 L. T. 635; 45 J. P. 207; Colt. 152; Saint's Registration Cases, 339 207, 227, 229, 254
——— *v.* Phillips, [1894] 1 Q. B. 349; 63 L. J. (M. C.) 79; 70 L. T. 559; 58 J. P. 460 573

PAGE
Salford Case (1869), 1 O'M. & H. 133 271, 273, 280, 447, 448
——— Petition (a Summons), *Re* (1868), 19 L. T. 502 422, 427
Salisbury Borough Case (1886), 4 O'M. & H. 21 272, 473
———— Case (1880), 3 O'M. & H. 130 281
———————— Rigden *v.* Passmore-Edwards (1881), 44 L. T. 192 . . 269, 288
Samuel *v.* Hitchmough (1862), 13 C. B. (N. S.) 3; 32 L. J. (C. P.) 55; 7 L. T. 360; 9 Jur. (N. S.) 414; 11 W. R. 92: K. & G. 522 212
Sanders *v.* Smith (1880), 43 L. T. 438; Colt. 150 152
Sandford *v.* Beal (1895), 65 L. J. (Q. B.) 73; 73 L. T. 406; 1 Smith, Reg. Cas. 1. 230
Sandwich Case (1880), 3 O'M. & H. 158 281, 288, 472
Sargent *v.* Rodd (1879), 49 L. J. (P. C.) 195; 44 J. P. 299; Colt. 14 211
Saunders *v.* Crawford (1882), 9 Q. B. D. 612; 51 L. J. (Q. B.) 460; 46 L. T. 420; 46 J. P. 344 56
——— *v.* Holborn District Board of Works, [1895] 1 Q. B. 64; 64 L. J. (Q. B.) 101; 71 L. T. 519; 59 J. P. 453; 43 W. R. 26: 15 R. 25 592
——— *v.* Richardson (1881), 7 Q. B. D. 388; 50 L. J. (M. C.) 137; 45 L. T. 319; 45 J. P. 782; 29 W. R. 800 60
Scales *v.* Key (1840), 11 Ad. & El. 819 500
Scheme under the Welsh Intermediate Education Act, 1889, *Re*, *Re* Swansea Free Grammar School. *See* Swansea Free Grammar School, *Re*, *Re* Scheme under the Welsh Intermediate Education Act, 1889.
School Board Election Petition for Long Sutton, *Re* (1898), 62 J. P. 565 . . 476
Scorgie *v.* Laurie (1883), 10 R. (Ct. of Sess.) 610 124
Scott *v.* Durant (1865), 18 C. B. (N. S.) 205; 34 L. J. (C. P.) 81; 11 L. T. 676; 11 Jur. (N. S.) 115; 13 W. R. 316; Hop. & Ph. 269 249
Scriven, *Ex parte*, R. *v.* London County Council. *See* R. *v.* London County Council, *Ex parte* Scriven.
Sedgwick *v.* Neville (1885), 16 Q. B. D. 254 173
Selby *v.* Crystal Palace Gas Co. (1862), 4 De G. F. & J. 246; 31 L. J. (CH.) 595; 6 L. T. 790; 8 Jur. (N. S.) 830; 10 W. R. 636, C. A. 574
Shaftoe's Charity, *Re* (1878), 3 App. Cas. 872; 47 L. J. (P. C.) 98; 38 L. T. 793 106, 110
Shaw *v.* Reckitt, [1893] 1 Q. B. 779; 68 L. T. 688; 41 W. R. 497; 5 R. 384 . 399, 409, 413, 437, 505
——— *v.* ——— [1893] 2 Q. B. 59; 62 L. J. (Q. B.) 375; 69 L. T. 327; 57 J. P. 805; 41 W. R. 497; 4 R. 425, C. A. 460
Sheffield Corporation *v.* Sheffield Electric Light Co., [1898] 1 Ch. 203; 67 L. J. (CH.) 113; 77 L. T. 616; 62 J. P. 87; 46 W. R. 485 637
Sheil *v.* Ennis and Nugent, *Re* Athlone Borough Election Petition. *See* Athlone Borough Election Petition, *Re*, Sheil *v.* Ennis and Nugent.
Sheldon *v.* Flatcher (1847), 5 C. B. 14; 17 L. J. (C. P.) 34; 4 Jur. 949; 2 Lut. Reg. Cas. 11 212, 248
Shelfer *v.* City of London Electric Lighting Co., [1895] 1 Ch. 287; 64 L. J. (CH.) 216; 72 L. T. 34; 43 W. R. 238; 12 R. 112, C. A. 561, 563
Sherlock *v.* Steward (1859). 7 C. B. (N. S.) 21; 29 L. J. (C. P.) 87; 1 L. T. 100; 6 Jur. (N. S.) 611; 8 W. R. 89; K. & G. 286 151, 255
Sherwin *v.* Whyman (1873), L. R. 9 C. P. 243; 43 L. J. (C. P.) 36; 29 L. T. 680; 22 W. R. 127; 2 Hop. & Colt. 185 224, 250
Shoreditch (Hoxton Division) Parliamentary Election, 1886, *Re*, *Ex parte* Walker (1887), 56 L. T. 529 259, 334
Shrewsbury Case (1870), 2 O'M. & H. 36 272, 386
———————— (1885), 4 T. L. R. 160. 297
———————— (1903), Rogers on Elections, Vol. III., 18th ed., p. 714 . 424, 477
Silver *v.* Benn (1896), 12 T. L. R. 199 299
Simeon *v.* Watson (1877), 46 L. J. (Q. B.) 679 123
Simey *v.* Dixon (1871), L. R. 7 C. P. 190; 41 L. J. (C. P.) 18; 25 L. T. 811; 20 W. R. 238; 1 Hop. & Colt. 626 214
——— *v.* Marshall (1872), L. R. 8 C. P. 269; 42 L. J. (C. P.) 49; 27 L. T. 581; 21 W. R. 123; 2 Hop. & Colt. 1 149
Simpson *v.* Wilkinson (1843), 5 Man. & G. 3, n.; 13 L. J. (C. P.) 39; 1 Lut. Reg. Cas. 5; 7 Scott (N. R.), 406; 1 Dow. & L. 786 . . 251
——— *v.* ——— (1844), 7 Man. & G. 50; 14 L. J. (C. P.) 49; 8 Jur. 1126; 8 Scott (N. R.), 814; 1 Lut. Reg. Cas. 168 149, 166, 255
Slater, *Ex parte*, *Ex parte* Tolley. *See* Tolley, *Ex parte*, *Ex parte* Slater.
Sligo Case (1853), 2 Pow. R. & D. 256 289
———— (1869), 1 O'M. & H. 300 280, 289, 438
Smallwood, *Re*, Gothard *v.* Chapman, [1910] 1 Ch. 272; 79 L. J. (CH.) 256; 101 L. T. 806; 74 J. P. 45 25

PAGE
Smith, *Re, Ex parte* Mason, [1893] 1 Q. B. 323 ; 67 L. T. 596 ; 57 J. P. 72 ; 41 W. R. 159 ; 5 R. 47 ; 9 Morr. 304 599
——— *v.* Chandler (1888), 22 Q. B. D. 208 ; 58 L. J. (Q. B.) 103 ; 60 L. T. 327 ; 53 J. P. 199 ; 37 W. R. 351 ; Fox & S. Reg. 129 208, 228, 229
——— *v.* Haggett (1861), 11 C. B. (N. S.) 55 ; 31 L. J. (C. P.) 38 ; 5 L. T. 425 ; 8 Jur. (N. S.) 617 ; 10 W R. 131 ; K. & G. 434 211, 255
——— *v.* Hall (1863), 15 C. B. (N. S.) 485 144, 145
——— *v.* Holloway (1865), L. R. 1 C. P. 145 ; 35 L. J. (C. P.) 100 ; 13 L. T. 468 ; 12 Jur. (N. S.) 164 ; 14 W. R. 202 ; Har. & Ruth. 315 ; Hop. & Ph. 281 210
——— *v.* James (1865), L. R. 1 C. P. 138 ; 13 L. T. 69 ; 12 Jur. (N. S.) 125 ; 14 W. R. 201 ; Har. & Ruth. 338 ; Hop. & Ph. 317 232
——— *v.* Phelipps (1718), 1 Bro. Parl. Cas. 69 312
——— *v.* Seghill Overseers (1875), L. R. 10 Q. B. 422 ; 44 L. J. (M. C.) 114 ; 32 L. T. 859 ; 23 W. R. 745 168
——— *v.* Woolston (1878), 4 C. P. D. 73 ; 48 L. J. (C. P.) 84 ; 40 L. T. 198 ; 27 W. R. 535 226, 255
Solomons *v.* Stepney Borough Council (1905), 69 J. P. 360 ; 3 L. G. R. 912...564, 577
Soper *v.* Basingstoke Corporation (1877), 2 C. P. D. 440 ; 46 L. J. (C. P.) 422 ; 36 L. T. 468 ; 25 W. R. 693 274
South Meath Case (1892), Day, 32 281
South Shropshire Election, *Re* (1886), 54 L. T. 129 ; 34 W. R. 352 ; 2 T. L. R. 347 403, 405
South Wimbledon Division Election, *Re, Ex parte* Fenwick (1889), 5 T. L. R. 221 401, 477
Southampton Borough Case (1895), 5 O'M. & H. 17...291, 294, 399, 403, 424, 472, 474
——————— (1869), 1 O'M. & H. 222 289, 444, 448, 454, 456, 457
——————— Election Petition (1870), 22 L. T. 98 478
Southampton Tramways Co. and Southampton Corporation, *Re* (1899), 81 L. T. 652 ; 63 J. P. 788 ; 16 T. L. R. 38, C. A. 637
Southwark and Vauxhall Water Co. *v.* Wandsworth Board of Works, [1898] 2 Ch. 603 ; 79 L. T. 132 ; 62 J. P. 756 ; 47 W. R. 107 ; 14 T. L. R. 576, C. A. 580
Soutter *v.* Roderick, [1896] 1 Q. B. 91 ; 65 L. J. (Q. B.) 145 ; 73 L. T. 576 ; 44 W. R. 205 ; 1 Smith, Reg. Cas. 36 226, 228
Speight, *Re, Ex parte* Brooks (1884), 13 Q. B. D. 42 254
Spencer *v.* Harding (1870), L. R. 5 C. P. 561 ; 39 L. J. (C. P.) 332 ; 23 L. T. 237 ; 19 W. R. 48 124
——— *v.* Harrison (1879), 5 C. P. D. 97 ; 49 L. J. (C. P.) 188 ; 41 L. T. 676 ; 44 J. P. 235 ; 28 W. R. 985 ; Colt. 61 150
——— *v.* ——— (1880), 44 L. T. 283 282
Spilsbury *v.* Micklethwaite (1808), 1 Taunt. 146 258, 312
Spittall *v.* Brook (1886), 18 Q. B. D. 426 ; 56 L. J. (Q. B.) 48 ; 56 L. T. 364 ; 35 W. R. 520 ; Fox & S. Reg. 22 164
Sproule *v.* Buchanan (1894), 2 Laws. Reg. Cas. 51 256
Stafford Case (1869), 1 O'M. & H. 228 280, 281, 287, 289, 425, 437, 472
——— Election Petition (1869), 20 T. L. R. 180 423, 430
Staleybridge (1869), 19 L. T. 703 430, 511
——————— Case (1869), 1 O'M. & H. 66 270, 272, 281, 282, 447
Stamford Case, Cade and Burrow *v.* Marsh (1906), *Times*, January 20th . . 510
Stanford *v.* Williams (1899), 80 L. T. 490 ; 15 L. T. 316 187
Stanley's Trust Deed, *Re*, Stanley *v.* A.-G. (1910), 26 T. L. R. 365 121
Stannanought *v.* Hazeldine (1879), 4 C. P. D. 191 ; 48 L. J. (M. C.) 89 ; 27 W. R. 620 ; 40 L. T. 589 319
Steele *v.* Bosworth (1864), 18 C. B. (N. S.) 22 ; 34 L. J. (C. P.) 57 ; 11 L. T. 507 ; 10 Jur. (N. S.) 1239 ; 13 W. R. 260 ; Hop. & Ph. 106 149
——— *v.* Mahon, [1910] 2 I. R. 207 ; 44 I. L. T. 37, C. A. 169, 170
Stephens, *Ex parte*, Kidwelly Case. *See* Kidwelly Case, *Ex parte* Stephens.
Stepney Borough Case (1892), *Times*, November 1st 438
——— (1892), 4 O'M. & H. 178 ; Day, 10 279, 302, 400, 403, 404, 423, 436, 477
——————— (1886), 4 O'M. & H. 34 . 265, 268, 279, 292, 302, 315, 318, 327, 400, 403, 405, 427, 428, 442, 443, 450, 454, 455, 457, 458, 459, 473, 474
——— Election Petition, *Re*, Isaacson *v.* Durant (1886), 17 Q. B. D. 54 ; 55 L. J. (Q. B.) 331 ; 54 L. T. 684 ; 34 W. R. 547 . . . 140, 455, 459, 460

PAGE
Stevens *v.* Tillett (1870), L. R. 6 C. P. 147 ; 40 L. J. (C. P.) 58 ; 23 L. T. 622 ; 19 W. R. 182 453, 462, 469
Stevenson *v.* Craig, [1906] 2 K. B. 298 ; 75 L. J. (K. B.) 565 ; 95 L. T. 111 ; 70 J. P. 340 ; 4 L. G. R. 863 59, 61, 62, 68, 69
——— *v.* Goldstraw, [1906] 2 K. B. 298 ; 75 L. J. (K. B.) 565 ; 95 L. T. 111 ; 70 J. P. 340 ; 4 L. G. R. 863 59, 61, 62, 68, 69
Stirlingshire Case (1838), Falc. & Fitz. 538 324
Stocker *v.* Brockelbank (1851), 3 Mac. & G. 250 ; 20 L. J. (CH.) 401 ; 15 Jur. 591 125
Storey *v.* Bermondsey Town Clerk, [1910] 1 K. B. 203 ; 79 L. J. (Q. B.) 349 ; 102 L. T. 52 ; 74 J. P. 94 ; 26 T. L. R. 190 ; 54 Sol. Jo. 197 ; 8 L. G. R. 128, C. A. 223, 232, 248
Stowe *v.* Jolliffe (1874), L. R. 9 C. P. 446 ; 43 L. J. (C. P.) 173 ; 30 L. T. 299 ; 22 W. R. 946 428, 429
——— *v.* ——— (1874), L. R. 9 C. P. 734 ; 43 L. J. (C. P.) 265 ; 30 L. T. 795 ; 22 W. R. 911 233, 314, 455
Strachan *v.* Binnie (1888), [1897] W. N. 99 ; 15 R. (Ct. of Sess.) 380 . . 167
Stratford-upon-Avon Corporation Case (1886), 2 T. L. R. 431 339
Streatham Vestry Election, *Re*, *Re* Andrews. *See* Andrews, *Re*, *Re* Streatham Vestry Election.
Stribling *v.* Halse (1885), 16 Q. B. D. 246 ; 55 L. J. (Q. B.) 15 ; 54 L. T. 268 ; 49 J. P. 727 ; Colt. 409 162, 173, 174
Strong *v.* Treise, [1909] 1 K. B. 613 ; 78 L. J. (K. B.) 401 ; 100 L. T. 340 ; 73 J. P. 105 ; 25 T. L. R. 314 ; 7 L. G. R. 411 62
Stroud Borough Case (1874), 2 O'M. & H. 107. 286, 444, 446, 452
——— Case (1869), 1 O'M. & H. 302 289
——— ——— (1874), 2 O'M & H. 179 288
——— ——— (1874), 3 O'M & H. 7. 270, 472
Sudbury Case (1842), Bar. & Aust. 237 446
——— ——— (1870), Phil. El. Cas. 148 144
Sudbury Corporation *v.* Empire Electric Light and Power Co., Ltd., [1905] 2 Ch. 104 ; 74 L. J. (CH.) 442 ; 93 L. T. 630 ; 69 J. P. 321 ; 53 W. R. 684 ; 3 L. G. R. 822 562
Sulston *v.* Norton (1761), 3 Burr. 1235 ; 1 Wm. Bl. 317 282, 283, 287
Summers *v.* Moorhouse (1884), 13 Q. B. D. 388 ; 53 L. J. (Q. B.) 564 ; 51 L. T. 290 ; 48 J. P. 424 ; 32 W. R. 826 355
Sunderland Borough Case (1896), 5 O'M. & H. 53 271, 299
Sutton *v.* Wade (1890), Fox & S. Reg. 170 ; [1891] 1 Q. B. 269 ; 60 L. J. (Q. B.) 28 ; 63 L. T. 588 ; 55 J. P. 342 ; 39 W. R. 223 214, 255
Sutton Coldfield Grammar School, *Re* (1882), 7 App. Cas. 91 ; 51 L. J. (P. C.) 8 ; 45 L. T. 631 ; 30 W. R. 341 101, 105
Swansea Case (1909), *Times*, February 3rd 271, 341
Swansea Free Grammar School, *Re*, *Re* Scheme under the Welsh Intermediate Education Act, 1889, [1894] A. C. 252 ; 63 L. J. (P. C.) 101 ; 70 L. T. 738 . 108, 110
Syresham Division Case (1889), 5 T. L. R. 195 401

T.

TAFF Vale Rail. Co. *v.* Cardiff Union Assessment Committee (1907), 71 J. P. 350 ; 23 T. L. R. 528 ; 5 L. G. R. 993 574
——— ——— *v.* Pontypridd Urban District Council (1905), 93 L. T. 126 ; 69 J. P. 351 ; 3 L. G. R. 1339 574
Tamworth Case (1869), 1 O'M. & H. 75 . . 270, 271, 273, 280, 417, 447, 451
——— Election Petition (1870), 22 L. T. 98 478
Tanner *v.* Carter (1885), 16 Q. B. D. 231 ; 55 L. J. (Q. B.) 27 ; 53 L. T. 663 ; 34 W. R. 41 164
Tatham *v.* Ermen, *Re* Ermen. *See* Ermen, *Re*, Tatham *v.* Ermen.
Taunton Borough Case (1874), 2 O'M. & H. 66, 71 . . 425, 426, 444, 447, 451, 452, 459, 460
——— Case (1775), 1 Doug. El. Cas. 372 144
——— ——— (1838), Falc. & Fitz. 295 324
——— ——— (1809), 1 O'M. & H. 181 270, 288, 447, 454
Tavistock Borough Case (1853), 2 Pow. R. & D. 5 306
Taylor *v.* St. Mary Abbott Overseers (1870), L. R. 6 C. P. 309 ; 40 L. J. (C. P.) 45 ; 23 L. T. 493 ; 19 W. R. 100 ; 1 Hop. & Colt. 421 164, 177

PAGE
Tepper *v.* Nichols (1864), 18 C. B. (N. S.) 121; 34 L. J. (C. P.) 61; 11 L. T. 509; 11 Jur. (N. S.) 18; 13 W. R. 270; Hop. & Ph. 202 147, 256
Tewkesbury Case (1880), 3 O'M. & H. 97 270, 272, 281
Thackway *v.* Pilcher (1866), L. R. 2 C. P. 100; 36 L. J. (C. P.) 73; 15 L. T. 443; 15 W. R. 223 212, 248
Thirsk Borough Case (1880), 3 O'M. & H. 113 453
Thomas, *Ex parte*, Rhyl Division Case. *See* Rhyl Division Case, *Ex parte* Thomas.
——— *Re*, *Ex parte* Ystradyfodwg Local Board (1887), 57 L. J. (Q. B.) 39; 58 L. T. 113; 36 W. R. 143; 4 Morr. 295 599
——— *v.* Wylie (1868), 19 L. T. 498 419
Thompson *v.* Brighton Corporation, [1894] 1 Q. B. 332, C. A. 577
——— *v.* Rose (1891), 61 L. J. (M. C.) 26; 65 L. T. 851; 56 J. P. 438; 40 W. R. 155 57
——— *v.* Sunderland Gas Co. (1877), 2 Ex. D. 429; 46 L. J. (EX.) 710; 37 L. T. 30; 25 W. R. 809, C. A. 574
——— *v.* Ward (1871), L. R. 6 C. P. 327; 40 L. J. (C. P.) 169; 24 L. T. 679; 1 Hop. & Colt. 530 171, 174, 175
Thornbury Case (1886), 4 O'M. & H. 65 280, 472, 473
——— Division of Gloucestershire Election Petition, *Re*, Ackers *v.* Howard (1886), 16 Q. B. D. 46; 55 L. J. (Q. B.) 273; 54 L. T. 651; 50 J. P. 519; 34 W. R. 609 313, 317, 327, 436, 459, 460
Thornley *v.* Aspland (1846), 2 C. B. 160; 1 Lut. Reg. Cas. 423 153
Thornton Urban Council *v.* Blackpool and Fleetwood Tramroad Co., [1909] A. C. 264; 78 L. J. (K. B.) 517; 100 L. T. 657; 73 J. P. 299; 25 T. L. R. 481; 53 Sol. Jo. 445; 7 L. G. R. 687 551
Timmis *v.* Albiston, [1895] 2 Q. B. 58; 64 L. J. (Q. B.) 564; 59 J. P. 663; Fox & S. Reg. 426; 15 R. 422 184
Tipperary County Case (1875), 3 O'M. & H. 19 . . 140, 306, 418, 435, 445, 446, 458, 459
Tolley, *Ex parte*, *Ex parte* Slater (1907), 71 J. P. 236 401
Tomline *v.* Tyler (Sir H.) (1881), 44 L. T. 187 272, 288
Toms *v.* Cuming (1845), 14 L. J. (C. P.) 67; 9 Jur. 90; 7 Man. & G. 88; 1 Lut. Reg. Cas. 200; Bar. & Arn. 347; 8 Scott (N. R.), 910 214
——— *v.* Luckett (1847), 5 C. B. 23; 17 L. J. (C. P.) 27; 11 Jur. 993; 2 Lut. Reg. Cas. 19 160, 161, 185
Topping *v.* Keogh, [1910] 2 I. R. 1; 44 I. L. T. 41, C. A. 207
Torish *v.* Clark (Monaghan's Case) (1885), [1897] W. N. 102: 18 I. R. Ir. 285 . 174
——— *v.* Moore (1894), 29 I. L. T. 25 171
Townshend *v.* St. Marylebone Overseers (1871), L. R. 7 C. P. 143; 41 L. J. (C. P.) 25; 25 L. T. 749; 20 W. R. 148; 1 Hop. & Colt. 606 . 157, 224, 227
Tozeland *v.* West Ham Union, [1907] 1 K. B. 920; 76 L. J. (K. B.) 514; 96 L. T. 519; 71 J. P. 194; 23 T. L. R. 325, C. A. 34
Tozer *v.* Child (1857), 7 E. & B. 377; 26 L. J. (Q. B.) 151; 3 Jur. (N. S.) 744...312, 537
Tranior *v.* Starbuck (1893), Fox & S. Reg. 340 209, 226
Treadgold *v.* Grantham Town Clerk, [1895] 1 Q. B. 163; 64 L. J. (Q. B.) 29; 71 L. T. 729; 58 J. P. 787; Fox & S. Reg. 402 226, 228
Trench *v.* Nolan (1872), 6 I. R. C. L. 464; 27 L. T. 69; 20 W. R. 833 . . 458
——— *v.* ——— (1873), 7 I. R. C. L. 445 479
Trenfield *v.* Lowe (1869), L. R. 4 C. P. 454; 38 L. J. (C. P.) 191; 20 L. T. 394; 17 W. R. 673; 1 Hop. & Colt. 237 146
Trevor *v.* Fowle (1879), Saint's Registration Cases, p. 328 160
Trotter *v.* Trevor (1862), 13 C. B. (N. S.) 48 143
——— *v.* Walker (Aylan's Case) (1862), 13 C. B. (N. S.) 30 214
——— *v.* Watson (1869), L. R. 4 C. P. 434; 38 L. J. (C. P.) 100; 19 L. T. 785; 17 W. R. 330; 1 Hop. & Colt. 216 155
Trowbridge Water Co. *v.* Wilts County Council, [1909] 1 K. B. 824; 78 L. J. (K. B.) 406; 101 L. T. 35; 73 J. P. 280; 25 T. L. R. 388; 53 Sol. Jo. 448; 7 L. G. R. 484 36
Truscott *v.* Bevan (1880), 44 L. T. 64 272, 289
Tucker's Case, Bridgewater. *See* Bridgewater, Tucker's Case.
Tudball *v.* Bristol Town Clerk (1843), 13 L. J. (C. P.) 49; 7 Jur. 1041; 1 Lut. Reg. Cas. 7; 7 Scott (N. R.), 486; Bar. & Arn. 8; 5 Man. & G. 5 . . 212

U.

UNWIN *v.* McMullen, [1891] 1 Q. B. 694, C. A. 184, 437, 460
Urquhart (Lord Provost of Dundee) *v.* Air, [1910] S. C. 54; 47 Sc. L. R. 56 . 307

V.

PAGE
VANCE's Case (1840), Alc. Reg. Cas. 269 155
Vickerman, *Ex parte*, *Re* St. Issels Division Election. *See* St. Issels Division Election, *Re*, *Ex parte* Vickerman.
Vickers *v.* Selwyn (1903), 89 L. T. 747; 68 J. P. 9; 52 W. R. 153; 1 Smith, Reg. Cas. 325 149

W.

W., *Re*, W. *v.* M., [1907] 2 Ch. 557, C. A. 4
Wade *v.* Perkins (1893), Fox & S. Reg. 338 171
Wadmore *v.* Dear (1871), L. R. 7 C. P. 212; 41 L. J. (C. P.) 49; 26 L. T. 28; 20 W. R. 239 147
Wakefield Case (1842), Bar. & Aust. 270 260, 305, 306
——— (1874), 2 O'M. & H. 100 270, 271, 272, 287, 444, 447
Wakefield Corporation *v.* Wakefield and District Light Railway Co., [1908] A. C. 293; 77 L. J. (K. B.) 692; 99 L. T. 1; 72 J. P. 315; 24 T. L. R. 603; 6 L. G. R. 647; 52 Sol. Jo. 497 551
Walker, *Ex parte* (1889), 22 Q. B. D. 384; 58 L. J. (Q. B.) 190; 60 L. T. 581; 37 W. R. 293; 53 J. P. 260, C. A. 402
——— *Re* Shoreditch (Hoxton Division) Parliamentary Election. *See* Shoreditch (Hoxton Division) Parliamentary Election, *Re*, *Ex parte* Walker.
——— Richmond Case. *See* Richmond Case, *Ex parte* Walker.
——— *v.* Payne (1845), 2 C. B. 12; 15 L. J. (C. P.) 38; 9 Jur. 1014; 1 Lut. Reg. Cas. 324; Bar. & Arn. 541 224, 233
Walker's (Dr.) Case (1735), Lee *temp.* Hard. 215 92
Wallasey United Tramways and Omnibus Co. *v.* Wallasey Urban District Council (1900), 17 T. L. R. 152 637
Wallingford Borough Case (1869), 1 O'M. & H. 57 431, 456
——— Case (1869), 1 O'M. & H. 59 290
Wallis *v.* Birks (1870), L. R. 5 C. P. 222; 39 L. J. (C. P.) 106; 22 L. T. 268; 18 W. R. 734; 1 Hop. & Colt. 365 149
Wallsend Borough Council and Northumberland County Council, *Re*, [1906] 2 Ch. 506; 75 L. J. (CH.) 813; 95 L. T. 259; 70 J. P. 434; 22 T. L. R. 773; 4 L. G. R. 1141 17
Walsall Borough Case (1892), 4 O'M. & H. 123; Day, 12 . 264, 266, 273, 302, 399, 400, 402, 404, 411, 423, 426
Walton Division Election, *Re*, *Ex parte* Hempson (1889), 5 T. L. R. 220 . . 402
Wanklyn *v.* Woollett (1847), 4 C. B. 86 250
Wansey *v.* Perkins (Quigley's Case) (1845), 7 Man. & G. 127 213, 239
——— *v.* St. Peter Le Poor (Overseers) (1845), 7 Man. & G. 162; 8 Scott (N. R.), 992 253
Warburton *v.* Denton Overseers (1870), L. R. 6 C. P. 267; 40 L. J. (C. P.) 49; 23 L. T. 729; 19 W. R. 210; 1 Hop. & Colt. 432 155
Ward *Ex parte*, Fremington School, *Re*. *See* Fremington School, *Re*, *Ex parte* Ward.
——— *v.* Nanney (1828), 3 C. & P. 399 280
——— *v.* Portsmouth Corporation, [1898] 2 Ch. 191; 67 L. J. (CH.) 489; 78 L. T. 771; 62 J. P. 820; 46 W. R. 610; 14 T. L. R. 472, C. A. . . 298, 569
Wareham Case (1857), Wolf. & D. 85 288
Warren *v.* Maule (1894), 71 L. T. 731; 15 R. 53; Fox & S. Reg. 400. . . 231
Warrington Case (1869), 1 O'M. & H. 42 313, 417, 459, 460, 473
Waterford Case (1870), 2 O'M. & H. 1 271, 283, 284, 425, 440, 447
Wathen *v.* Sandys (1811), 2 Camp. 640 334
Watson *v.* Black (1885), 16 Q. B. D. 270; 55 L. J. (Q. B.) 31; 54 L. T. 17; 34 W. R. 274; Colt. 418 147
——— *v.* Cotton (1847), 5 C. B. 51; 17 L. J. (C. P.) 68; 11 Jur. 1106; 2 Lut. Reg. Cas. 53 159, 160, 161, 186, 248
——— *v.* Pitt (1847 or 1848), 5 C. B. 77; 17 L. J. (C. P.) 143; 12 Jur. 121; 2 Lut. Reg. Cas. 73 211, 248, 255
Watt *v.* McGuire (1888), [1897] W. N. 109 164
Watts *v.* Hemming (1907), 71 J. P. 504 393
Waygood *v.* James (1869), L. R. 4 C. P. 361; 38 L. J. (C. P.) 195; 21 L. T. 202; 17 W. R. 824 460

PAGE
Wearmouth Crown Glass Co., *Re* (1882), 19 Ch. D. 640; 45 L. T. 757; 30 W. R. 316 599
Webb *v.* Aston (1843), 5 Man. & G. 14; 7 Scott (N. R.), 435; 1 Lut. Reg. Cas. 6; 1 L. J. (C. P.) 57 155, 253, 254, 256
—— *v.* Smith (1838), 4 Bing. (N. C.) 373; 7 L. J. (C. P.) 191; 2 Jur. 304; 6 Scott, 147; 1 Arn. 145 282
Webster *v.* Ashton-under-Lyne Overseers, Hadfield's Case (1873), L. R. 8 C. P. 306; 42 L. J. (C. P.) 146; 28 L. T. 901; 21 W. R. 637; 2 Hop. & Colt. 89 148, 256
—— *v.* —— Orme's Case (1872), L. R. 8 C. P. 281; 42 L. J. (C. P.) 38; 27 L. T. 652; 21 W. R. 171; 2 Hop. & Colt. 60 . . 148
Wellesley *v.* Beaufort (Duke) (1827) 2 Russ. 1 4
Wells *v.* Stanforth (1885), 16 Q. B. D. 244; 55 L. J. (Q. B.) 12; 54 L. T. 183; 50 J. P. 631; Colt. 451 200, 203, 228
—— *v.* Wren (1880), 5 C. P. D. 546; 49 L. J. (C. P.) 681 . . . 430, 441, 511
West *v.* Robson (1857), 3 C. B. (N. S.) 422; 27 L. J. (C. P.) 262; 4 Jur. (N. S.) 666; 6 W. R. 659; K. & G. 141 146, 149, 151, 253
West Dorchester Election, *Re*, *Ex parte* Gregory and Frost (1889), 5 T. L. R. 221...401
West Lambeth School Board Case, *Ex parte* Hughes (1900), 45 Sol. Jo. 79 . 402
West Riding (Southern Division) Case (1869), 1 O'M. & H. 214 . 424, 437, 454, 473
Westbury Case (1869), 1 O'M. & H. 47 . . . 270, 272, 287, 444, 445, 447, 456
—— (1880), 3 O'M. & H. 78 273
Westbury-on-Severn Case (1854), 4 E. & B. 314 393
Westminster Case (1869), 1 O'M. & H. 89 270, 272, 273, 283, 429, 446, 473
—— Division School Board Case, *Ex parte* Kyd (1897), 14 T. L. R. 64 . 402, 403
Wexford Election Petition (1869), 3 I. R. C. L. 612 278
Whiston *v.* Rochester (Dean and Chapter) (1849), 7 Hare, 532; 18 L. J. (CH.) 473; 13 Jur. 694 127
White *v.* Pring (1849), 8 C. B. 13 253
Whitechapel Board of Works *v.* Crow (1901), 84 L. T. 595; 65 J. P. 463; 17 T. L. R. 463; 19 Cox, C. C. 700 577
Whithorn *v.* Thomas (1844), 7 Man. & G. 1; Bar. & Arn. 259; 8 Scott (N. R.), 783; 14 L. J. (C. P.) 38; 1 Lut. Reg. Cas. 125 248, 254
Whitmore *v.* Bedford (1843), 5 Man. & G. 9 160, 186, 256
Whitwell *v.* North Riding of Yorkshire (Clerk of the Peace) (1889), 59 L. J. (Q. B.) 96; 61 L. T. 811; 54 J. P. 263; Fox & S. Reg. 152 207, 255
Widdicombe *v.* Michelmore (1910), 102 L. T. 134 159, 165
Wigan Borough Case (1881), 4 O'M. & H. 1 270, 272, 279, 426, 448, 449, 452
—— Case (1869), 1 O'M. & H. 188 270, 425
—— Election, *Re* (1885), 2 T. L. R. 159 403
Wigton Burghs Case (1853), 2 Pow. R. & D. 133 282
Wigtown Case (1874), 2 O'M. & H. 215 327, 458, 476
Wilford *v.* West Riding County Council, [1908] 1 K. B. 685; 77 L. J. (K. B.) 436; 98 L. T. 670; 72 J. P. 107; 24 T. L. R. 286; 6 L. G. R. 244; 52 Sol. Jo. 263 11, 12, 36, 37, 38
Wilkes, *Ex parte* (1885), 16 Q. B. D. 114; 55 L. J. (Q. B.) 576; 50 J. P. 487; 34 W. R. 273 402, 506, 508
Wilkinson *v.* Malin (1832), 1 L. J. (EX.) 234; 2 Cr. & J. 636; 2 Tyr. 544 . . 126
Willes *v.* Horniman (1898), 14 T. L. R. 343, C. A. 423
Williams *v.* Blakeway (1902), 88 L. T. 231; 67 J. P. 11; 51 W. R. 127; 1 Smith, Reg. Cas. 204 150, 188
—— *v.* Eady (1893), 10 T. L. R. 41, C. A. 123
—— *v.* Stoughton (1817), 2 Stark. 292 122
—— *v.* Tenby Corporation (1879), 5 C. P. D. 135; 49 L. J. (C. P.) 325; 42 L. T. 187; 44 J. P. 348; 28 W. R. 348 418
Williamson, *Ex parte* (1906), 51 Sol. Jo. 14 401
Willingale *v.* Norris, [1909] 1 K. B. 57; 78 L. J. (K. B.) 69; 99 L. T. 830; 72 J. P. 495; 25 T. L. R. 19; 7 L. G. R. 76 628
Willis *v.* Childe (1851), 13 Beav. 117; 20 L. J. (CH.) 113; 15 Jur. 303 . 125, 127
—— *v.* Maclachlan (1876), 1 Ex. D. 376; 45 L. J. (Q. B.) 689; 35 L. T. 218 . 222
Wills *v.* Adey (1846), 2 C. B. 246; 15 L. J. (P. C.) 205; 1 Lut. Reg. Cas. 481; Bar. & Arn. 782 212
Wilson *v.* Ingham (1895), 64 L. J. (Q. B.) 775; 72 L. T. 796; 15 R. 488 . 313, 476
—— *v.* Reed (1860), 2 F. & F. 149 306

PAGE

Wilson *v.* Roberts (1861), 11 C. B. (N. S.) 50 ; 31 L. J. (C. P.) 78 ; 5 L. T. 838 ; K. & G. 430 ; 10 W. R. 429, n. 185
——— *v.* Salford Town Clerk (1868), L. R. 4 C. P. 398 ; 38 L. J. (C. P.) 35 ; 19 L. T. 483 ; 17 W. R. 161 ; 1 Hop. & Colt. 44 140, 248
Windsor Case (1869), 1 O'M. & H. 1 271, 287, 444, 445, 452
——— (1874), 2 O'M. & H. 88 272, 287, 451, 474
——— Election Petition (1869), 19 L. T. 613 451
Winyard *v.* Toogood (1882), 10 Q. B. D. 218 ; 52 L. J. (M. C.) 25 ; 48 L. T. 229 ; 47 J. P. 325 ; 31 W. R. 271 56
Wise *v.* Dunning, [1902] 1 K. B. 167 ; 71 L. J. (K. B.) 165 ; 85 L. T. 721 ; 66 J. P. 212 ; 50 W. R. 317 ; 18 T. L. R. 85 ; 20 Cox, C. C. 121 . . . 300
Withnell *v.* Gartham (1795), 6 Term Rep. 388 126
Wolfe *v.* Surrey County Council Clerk, [1905] 1 K. B. 439 ; 74 L. J. (K. B.) 161 ; 92 L. T. 114 ; 69 J. P. 22 ; 53 W. R. 264 ; 21 T. L. R. 153 ; 3 L. G. R. 407 ; 1 Smith Reg. Cas. 378 152
Wood *v.* Chandler (1887), 20 Q. B. D. 297 ; 57 L. J. (Q. B.) 126 ; 52 J. P. 520 ; 36 W. R. 522 ; Fox & S. Reg. 61 213
——— *v.* Hopper (1875), 1 C. P. D. 192 ; 45 L. J. (C. P.) 108 ; 33 L. T. 531 ; 24 W. R. 187 148
——— *v.* West Ham Gas Co. (1885), 52 L. T. 817 ; 49 J. P. 662 ; 33 W. R. 799 . 612
——— *v.* Willesden Overseers (1845), 2 C. B. 15 ; 15 L. J. (C. P.) 41 ; 9 Jur. 1100 ; 1 Lut. Reg. Cas. 314 ; Bar. & Arn. 527 224, 232, 248
Woodward *v.* Sarsons (1875), L. R. 10 C. P. 733 ; 44 L. J. (C. P.) 293 ; 32 L. T. 867 316, 320, 322, 323, 327, 329
Woollett *v.* Davis (1847), 4 C. B. 115 ; 16 L. J. (C. P.) 185 ; 11 Jur. 477 ; 1 Lut. Reg. Cas. 607 212
Worcester Borough Case (1880), 3 O'M. & H. 184 313
——— (1906), 5 O'M. & H. 212 ; Day, 214...443, 445, 449, 450, 462
——— (1892), Day, 85 ; 4 O'M. & H. 153 . 273, 423, 425, 426, 476
Wright *v.* Stockport Town Clerk (1843), 13 L. J. (C. P.) 50 ; 7 Jur. 1112 ; 7 Scott (N. R.) 561 ; Bar. & Arn. 39 ; 5 Man. & G. 33 186
——— *v.* Zetland (Marquis), [1908] 1 K. B. 63 ; 77 L. J. (K. B.) 152 ; 97 L. T. 867 ; 24 T. L. R. 48, C. A. 106
Wynne-Finch *v.* Chaytor, [1903] 2 Ch. 475 ; 72 L. J. (CH.) 723 ; 89 L. T. 123 ; 52 W. R. 24 ; 19 T. L. R. 631, C. A. 460

Y.

YATES *v.* Leach (1874), L. R. 9 C. P. 605 ; 43 L. J. (C. P.) 377 ; 30 L. T. 790...417 487, 497
Yellow *v.* Meredith (1903), 67 J. P. 111 474
York City Case (1898), 5 O'M. & H. 118 432
Youghal Case (1838), Falc. & Fitz. 385 289, 429
——— (1869), 1 O'M. & H. 291, 296 289, 413, 429
Young *v.* Cuthbert, [1906] 1 Ch. 451 ; 75 L. J. (CH.) 217 ; 94 L. T. 191 ; 54 W. R. 296 ; 22 T. L. R. 251 ; 4 L. G. R. 356 20, 36, 37
——— *v.* Figgins (1868), 19 L. T. 499 416, 417, 418, 419, 445, 515
Ystradyfodwg Local Board, *Ex parte*, *Re* Thomas. *See* Thomas, *Re*, *Ex parte* Ystradyfodwg Local Board.

EDUCATION.

PAGE

PART I. INTRODUCTION - - - - - - - - - - 4

PART II. CENTRAL AUTHORITIES - - - - - - - 8

SECT. 1. THE BOARD OF EDUCATION - - - - - - - 8

Sub-sect. 1. Constitution - - - - - - - - 8
Sub-sect. 2. Functions in General - - - - - - 9
Sub-sect. 3. Higher Education - - - - - - - 10
Sub-sect. 4. Elementary Education - - - - - - 10
Sub-sect. 5. Default of Local Education Authority - - 12
Sub-sect. 6. Educational Charities - - - - - - 13
Sub-sect. 7. Inquiries, Returns, and Reports - - - - 14

SECT. 2. OTHER CENTRAL AUTHORITIES - - - - - - 14

PART III. POWERS AND DUTIES OF LOCAL EDUCATION AUTHORITIES - - - - - - - - - - 15

SECT. 1. OUTLINE OF SYSTEM - - - - - - - - 15

SECT. 2. CLASSIFICATION AND CONSTITUTION - - - - - 17

Sub-sect. 1. Classification - - - - - - - - 17
Sub-sect. 2. Education Committees - - - - - - 19

SECT. 3. GENERAL POWERS - - - - - - - - - 20

SECT. 4. HIGHER EDUCATION - - - - - - - - - 22

Sub-sect. 1. In General - - - - - - - - - 22
Sub-sect. 2. Councils with concurrent Powers - - - 23
Sub-sect. 3. Religious Instruction - - - - - - 23
Sub-sect. 4. Provision of Schools - - - - - - 24

SECT. 5. ELEMENTARY EDUCATION - - - - - - - - 24

Sub-sect. 1. In General - - - - - - - - - 24
Sub-sect. 2. Supply of School Accommodation - - - 25
Sub-sect. 3. Provision of Schoolhouses - - - - - 26
Sub-sect. 4. Maintenance and Conduct of Public Elementary Schools in General - - - - - - 29
Sub-sect. 5. Rules specially applicable to the Conduct of Schools provided by a Local Education Authority - - - - - - - - - 33
Sub-sect. 6. Rules specially applicable to the Maintenance and Conduct of Voluntary Schools - - 34

SECT. 6. BLIND, DEAF, DEFECTIVE, AND EPILEPTIC CHILDREN - 40

Sub-sect. 1. In General - - - - - - - - - 40
Sub-sect. 2. Blind and Deaf Children - - - - - - 41
Sub-sect. 3. Defective and Epileptic Children - - - 42
Sub-sect. 4. Religious Instruction - - - - - - 43
Sub-sect. 5. Liability of Parent to Contribute to Expenses - 44
Sub-sect. 6. Certificates and Duties of Board of Education - 44

SECT. 7. COMBINED ACTION BY COUNCILS - - - - - - 45

SECT. 8. FINANCE AND AUDIT - - - - - - - - - 47

Sub-sect. 1. In General - - - - - - - - - 47

PAGE

PART III. POWERS AND DUTIES OF LOCAL EDUCATION AUTHORITIES—*continued.*

SECT. 8. FINANCE AND AUDIT—*continued.*
Sub-sect. 2. Provisions specially applicable to County Councils - - - - - - - 47
Sub-sect. 3. Grants from Central Authorities - - - 48
Sub-sect. 4. Loans - - - - - - - - 50
Sub-sect. 5. Miscellaneous Receipts - - - - - 51
Sub-sect. 6. Audit - - - - - - - - 52

SECT. 9. PROVISIONS SPECIALLY APPLICABLE TO LONDON - - 52

PART IV. DUTIES OF PARENTS AND EMPLOYERS - - - 54

SECT. 1. IN GENERAL - - - - - - - - - 54

SECT. 2. DUTIES AND LIABILITIES OF PARENTS - - - - 55
Sub-sect. 1. In General - - - - - - - 55
Sub-sect. 2. Duty to cause Child to receive efficient Elementary Instruction - - - - - - 56
Sub-sect. 3. Duty to cause Child to attend School in accordance with Bye-laws - - - - - 58

SECT. 3. DUTIES AND LIABILITIES OF EMPLOYERS - - - 62
Sub-sect. 1. In General - - - - - - 62
Sub-sect. 2. Default of Agents and Parents- - - - 64

SECT. 4. LEGAL PROCEEDINGS - - - - - - - - 65

SECT. 5. CHILDREN IN CANAL BOATS - - - - - - 67

SECT. 6. CHILDREN EMPLOYED IN FACTORIES AND WORKSHOPS - 67

PART. V. REFORMATORY AND INDUSTRIAL SCHOOLS - - 70

SECT. 1. IN GENERAL - - - - - - - - - 70

SECT. 2. CENTRAL AUTHORITY - - - - - - - 72

SECT. 3. POWERS AND DUTIES OF LOCAL AUTHORITIES AND MANAGERS - - - - - - - - - 73

SECT. 4. DISCHARGE, TRANSFER, LICENCE, SUPERVISION ETC. - 76

SECT. 5. EXPENSES OF SCHOOLS - - - - - - - 77

SECT. 6. DAY INDUSTRIAL SCHOOLS - - - - - - 79

PART VI. POWERS AND DUTIES OF POOR LAW AUTHORITIES 81

SECT. 1. IN GENERAL - - - - - - - - - 81

SECT. 2. THE LOCAL GOVERNMENT BOARD - - - - - 81

SECT. 3. POWERS AND DUTIES OF GUARDIANS - - - - 82
Sub-sect. 1. In General - - - - - - - 82
Sub-sect. 2. Certified Schools - - - - - - 84

SECT. 4. DISTRICT BOARDS - - - - - - - - 85
Sub-sect. 1. Formation of School Districts - - - - 85
Sub-sect. 2. Constitution of District Boards - - - 86
Sub-sect. 3. Powers and Duties of District Boards - - 86
Sub-sect. 4. Expenses of District Boards - - - - 87

SECT. 5. GRANTS TO POOR LAW AUTHORITIES BY COUNCILS IN RESPECT OF EDUCATION - - - - - - - 88

SECT. 6. RULES SPECIALLY APPLICABLE TO THE METROPOLIS - 88

SECT. 7. RELIGIOUS INSTRUCTION - - - - - - - 89

PART VII. UNIVERSITIES, AND SCHOOLS UNDER THE PUBLIC SCHOOLS ACTS - - - - - - 90

SECT. 1. UNIVERSITIES IN GENERAL - - - - - - - 90

SECT. 2. PARTICULAR INSTITUTIONS - - - - - - - 94

SECT. 3. SCHOOLS UNDER THE PUBLIC SCHOOLS ACTS - - - 97

	PAGE
PART VIII. EDUCATIONAL CHARITIES	99
SECT. 1. IN GENERAL	99
SECT. 2. POWERS OF THE BOARD OF EDUCATION UNDER THE ENDOWED SCHOOLS ACTS	99
Sub-sect. 1. In General	99
Sub-sect. 2. Charities to which the Acts apply	101
Sub-sect. 3. Apportionment of Mixed Charities	104
Sub-sect. 4. Necessary Provisions in Schemes	105
Sub-sect. 5. Necessary Provisions respecting Religious Matters	106
Sub-sect. 6. Procedure and Appeals	109
SECT. 3. WELSH INTERMEDIATE EDUCATION	111
Sub-sect. 1. In General	111
Sub-sect. 2. Endowments and Public Funds	112
Sub-sect. 3. Religious Instruction	113
Sub-sect. 4. Procedure	113
Sub-sect. 5. Operation of the Act	114
SECT. 4. MISCELLANEOUS	115
Sub-sect. 1. Provisions affecting certain Charities for Elementary Education	115
Sub-sect. 2. Conversion of Non-educational Charities to Education	115
Sub-sect. 3. Schools within the Grammar Schools Act, 1840	116
Sub-sect. 4. Requirement of Conscience Clause under Lord Cranworth's Act	116
PART IX. FACILITIES FOR GRANTING LAND FOR EDUCATION	117
SECT. 1. IN GENERAL	117
SECT. 2. GRANTS UNDER THE SCHOOL SITES ACTS	118
SECT. 3. TECHNICAL AND INDUSTRIAL INSTITUTIONS	121
PART X. SCHOOLMASTERS AND TEACHERS	122
SECT. 1. IN GENERAL	122
SECT. 2. COMMON LAW RULES	122
Sub-sect. 1. The Contract to Educate	122
Sub-sect. 2. Power to Punish Pupils	124
SECT. 3. SCHOOLMASTERS AS OFFICERS OF CHARITIES	125
SECT. 4. CANDIDATES FOR THE TEACHING PROFESSION	127
SECT. 5. REGISTRATION OF TEACHERS	127
SECT. 6. PENSION SCHEME FOR CERTIFICATED TEACHERS	127

For Art Galleries	*See title*	LITERARY AND SCIENTIFIC INSTITUTIONS; LOCAL GOVERNMENT.
Board of Agriculture and Fisheries	,,	AGRICULTURE.
Borstal Institutions	,,	CRIMINAL LAW AND PROCEDURE.
Charitable Trusts	,,	CHARITIES.
Charity Commissioners	,,	CHARITIES.
Child Labour	,,	FACTORIES AND SHOPS; INFANTS AND CHILDREN.
Closing Schools	,,	PUBLIC HEALTH.
Compensation to Officers	,,	PUBLIC AUTHORITIES AND PUBLIC OFFICERS.
Gymnasiums	,,	LOCAL GOVERNMENT.
Land, Acquisition of	,,	COMPULSORY PURCHASE OF LAND ETC.; LOCAL GOVERNMENT.

For Libraries	*See title*	LITERARY AND SCIENTIFIC INSTITUTIONS; LOCAL GOVERNMENT.
Local Authorities	,,	LOCAL GOVERNMENT.
Local Government Board	,,	LOCAL GOVERNMENT.
Museums	,,	LITERARY AND SCIENTIFIC INSTITUTIONS; LOCAL GOVERNMENT.
Provisional Orders	,,	PARLIAMENT.
Rating of School Buildings etc.	,,	RATES AND RATING.
Schools for Science and Art	,,	LOCAL GOVERNMENT.

Part I.—Introduction.

Law is statutory.

1. The law in relation to education is in substance statutory (*a*). The common law recognised directly neither educational duties nor educational rights, nor did equity extend its jurisdiction over infants by generally and practically enforcing any such duties and rights (*b*). Indirect legal recognition of education, outside the statutory sphere, is found in its adoption by equity as a proper object for a public or charitable trust (*c*), in the exercise of the royal prerogative in granting charters of incorporation to bodies engaged in educational work (*d*), and in a few rules of common law dealing with certain educational relations (*e*). But the law thence arising forms no distinct body, and in bulk bears no comparison to the numerous statutes which affect every side of educational work.

Historical process.

2. The stages and methods by which Parliament has proceeded mark the difference in practical character of the problems which have confronted it. For the most part, particular problems have been attacked before the more general ones, and provision has been

(*a*) By education, in the following pages, is meant, broadly speaking, (1) State-aided and State-provided education; (2) education which, being subject to a public or charitable trust, is affected by legislation varying the law of charitable trusts in its application to particular kinds of educational charities, including the Acts relating to particular universities and schools. For the general law of charitable trusts, see title CHARITIES, Vol. IV., pp. 105 *et seq.*, except as regards some rules relating to schoolmasters as officers of charities, as to which see p. 125, *post*. Private or proprietary schools have no law specially applicable to them, but are affected by certain common law rules which, in their application to schoolmasters are, for convenience, included in this article.

(*b*) At common law a parent is under no obligation to educate his child (*Hodges* v. *Hodges* (1796), Peake, Add. Cas. 79; *Wellesley* v. *Beaufort* (*Duke*) (1827), 2 Russ. 1, 22, 23). For a discussion of the powers of courts of equity in the exercise of their jurisdiction over infants on behalf of the Crown, as *parens patriæ*, with reference to the education of children, see *per* Lord ELDON in *Wellesley* v. *Beaufort* (*Duke*), *supra*, at pp. 19—23, and compare *Re W., W.* v. *M.*, [1907] 2 Ch. 557, C. A.; and see, generally, as to the rights of parents *inter se*, or against others, in respect of the control of the education of their children, titles HUSBAND AND WIFE; INFANTS AND CHILDREN.

(*c*) See title CHARITIES, Vol. IV., pp. 105 *et seq.*

(*d*) See title CORPORATIONS, Vol. VIII., pp. 304, 305.

(*e*) See p. 122, *post*.

earliest made for the education of special classes of persons. The history is legally important as having caused a division of the statutes relating to education into more or less separate groups in accordance with the difference of their subject-matter.

Children in factories and workshops.

3. The first modern statute upon education dealt with the special class of children employed in factories. In 1802 there began the legislation (*f*) which is now represented in a consolidated and amended form by the Factory and Workshop Act, 1901 (*g*). The subsequent growth and elaboration of rules respecting school attendance and child labour in statutes of universal application have reduced the practical importance of the educational rules relating to this special class of children (*h*).

Poor law education.

4. From the Poor Law Acts, still a confused and unconsolidated mass, are to be collected the rules whereby Parliament, beginning in 1833, has sought to enforce the education of children whose whole care and maintenance from time to time devolve upon poor law authorities (*i*).

Reformatory and industrial schools.

5. Children and young persons convicted of crime, or exposed to criminal influences, form another special class whose education early obtained statutory aid and control; the rules relating to reformatory and industrial schools, now amended and consolidated by the Children Act, 1908 (*j*), represent legislation which began in 1854 (*k*).

Educational charities.

6. The special mischiefs and anomalies which by the middle of the last century had become apparent among many educational charities provoked much parliamentary interference at that time. The legislation passed in 1854 and 1856, resulting from the reports of commissioners appointed to inquire into the Universities of Oxford and Cambridge, mark the first modern interference by Parliament with foundations of university rank (*l*). In 1868 an Act dealing in a special manner with seven historic public schools was a step in the same process (*m*). In 1869 the first of the Endowed Schools Acts established the system under which a more general reform of another class of educational charities has been made possible (*n*).

General executive provision.

7. While these special problems were thus receiving separate statutory treatment, the State had not been idle in making

(*f*) Stat. (1802) 42 Geo. 3, c. 73; and compare the repealed Factories Act, stat. (1833) 3 & 4 Will. 4, c. 103.

(*g*) 1 Edw. 7, c. 22. See title FACTORIES AND SHOPS.

(*h*) For the educational rules in the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), see p. 67, *post*. For the general conditions, not restricted to education, which may be imposed upon the employment of children, and the employment of children in general, see title INFANTS AND CHILDREN. For compulsory education and school attendance, see p. 54, *post*.

(*i*) For education under the poor laws, see p. 81, *post*.

(*j*) 8 Edw. 7, c. 67.

(*k*) For reformatory and industrial schools, see p. 70, *post*.

(*l*) For universities, see p. 90, *post*.

(*m*) For schools under the Public Schools Acts, see p. 97, *post*.

(*n*) For the Endowed Schools Acts, 1869 to 1889, see note (*h*), p. 99, *post*. The Charitable Trusts Acts, beginning in 1853, were part of this process, but are not restricted to education; see title CHARITIES, Vol. IV., p. 101. See also the Endowed Schools Act, 1860 (23 & 24 Vict. c. 11), and p. 116, *post*.

PART I. Introduction.

provision, general in character, for the educational needs of the country at large. But for many years the methods adopted were executive and not legislative. The system of grants in aid, at first, in 1833, administered by the Treasury, and continued in 1841, with enlarged aims, by a committee of the Privy Council, specially constituted by Order in Council, had by 1870 assisted the foundation or development of a considerable system of elementary schools throughout England and Wales, and the means for training teachers for serving in them. A similar activity of another Government department, the Science and Art Department, had rendered similar services to education, secondary in standard, in subjects broadly designated by the terms science and art (*o*).

But till 1870 the statute-book is practically bare of all signs of this process. Annual appropriations of sums of money, broadly designated in the Appropriation Acts as for the general purposes of public education or science and art, were the only direction Parliament gave to the Executive Government as to the aim of its educational activities. The process was indirectly facilitated by Acts which removed some of the difficulties surrounding the conveyance of land in trust for educational purposes, and afforded security for the due application of grants out of public money for building schools (*p*). But the basis of the system on which Parliament built in 1870 was constructed, mainly during the years 1833 to 1870, out of ancient endowments, voluntary contributions, and grants from Government departments. In the direction and control of this system Parliament, as a legislative body, played no practical part (*q*).

General legislative provision.

8. The legislative initiation of a general system of public education was made in 1870 by the first of the Acts known as the Education Acts, 1870 to 1909 (*r*). By those Acts powers and duties have been conferred upon central and local authorities for the provision of a complete system of public education, both primary and secondary

(*o*) For further details and references, see pp. 9, 15, *post;* and compare the Education Department Act, 1856 (19 & 20 Vict. c. 116).

(*p*) For the School Sites Acts, see p. 118, *post.*

(*q*) For the history on its educational and political side reference should be made to non-legal works, such as Craik's "State in Relation to Education"; Graham Balfour's "Educational Systems"; the various works of Professor M. E. Sadler; and the Parliamentary Debates, *passim.*

(*r*) These Acts are :—Elementary Education Act, 1870 (33 & 34 Vict. c. 75); Elementary Education Act, 1873 (36 & 37 Vict. c. 86); Elementary Education Act, 1876 (39 & 40 Vict. c. 79); Elementary Education Act, 1880 (43 & 44 Vict. c. 23); Education Code Act, 1890 (53 & 54 Vict. c. 22); Elementary Education Act, 1891 (54 & 55 Vict. c. 56); Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42); Elementary Education (School Attendance) Act, 1893 (56 & 57 Vict. c. 51); Elementary Education (School Attendance) Act (1893) Amendment Act, 1899 (62 & 63 Vict. c. 13); Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32); Elementary Education Act, 1900 (63 & 64 Vict. c. 53); Education Act, 1902 (2 Edw. 7, c. 42); Education (London) Act, 1903 (3 Edw. 7, c. 24); Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43); Education (Administrative Provisions) Act, 1909 (9 Edw. 7, c. 20). The following Acts—*i.e.*, Voluntary Schools Act, 1897 (60 & 61 Vict. c. 5); Education (Local Authority Default) Act, 1904 (4 Edw. 7, c. 18); Education (Provision of Meals) Act, 1906 (6 Edw. 7, c. 57); Local Education Authorities (Medical Treatment) Act, 1909 (9 Edw. 7, c. 13)—are also part of the system of the Education Acts, though not strictly citable with them.

Under this system the main work of State-aided and State-provided education is done, and the rules relating to it form the bulk of the educational statutes. The system is essentially a local government one, and exhibits the ordinary features of English local government, the actual work being chiefly done by local municipal bodies, though, as central authorities, Government departments exercise a close and important control over those bodies, and assist their work by large grants out of parliamentary funds (*s*).

As a corollary to the powers and duties of the public authorities concerned, duties, such as the common law never knew, have been imposed upon parents of having their children educated in elementary subjects. The law of compulsory education and school attendance in its practical working tends to form a part of the general statutory protection given by modern legislation to infants and children, and, in particular, must be read with the statutes regulating the employment of children (*t*).

Logical arrangement.

9. The statutory rules ordering this general system divide themselves logically into three broad divisions, the powers and duties of central authorities, the powers and duties of local authorities, and the duties of parents and employers. The rules affecting the education of special classes of children under other Acts than the Education Acts are likewise part of the local government system of the country, and fall similarly into those three divisions. It is, therefore, upon this basis that the law of public education is in the main treated in the following pages (*u*).

Educational foundations.

10. The law specially affecting educational foundations, both those of university and those of lower rank, stands partly outside such classification, and needs separate treatment (*x*).

Miscellaneous.

11. Some special facilities for granting land for educational purposes (*y*), and some miscellaneous provisions affecting schoolmasters

(*s*) For the Government departments exercising educational functions, see pp. 8, 14, *post*. The system is further characterised by the existence of numerous voluntary institutions which are subsidised and employed by the State for public purposes.

(*t*) For compulsory education and school attendance, see p. 54, *post*. For the employment of children in general, see titles FACTORIES AND SHOPS; INFANTS AND CHILDREN.

(*u*) For the powers and duties of central authorities, see p. 8, *post;* for the powers and duties of local education authorities generally, see p. 15, *post;* for the powers and duties of the same authorities as regards enforcing compulsory education and school attendance, see p. 54, *post;* and as regards industrial schools, see p. 73, *post;* for powers and duties of county and county borough councils respecting reformatory schools, see p. 73, *post;* for powers and duties of poor law authorities, see p. 81, *post*.

(*x*) For universities and schools under the Public Schools Acts, see p. 90, *post;* and for some miscellaneous rules arising under statutes specially affecting educational charities, see p. 99, *post*. The greater part of these latter rules come, in a sense, within the arrangement stated in the text, inasmuch as they concern almost entirely the powers and duties of central authorities, *i.e.*, the Board of Education and the Charity Commissioners, but they have no immediate connection with the local government system of the country, the functions of the departments in question being of a judicial rather than of an administrative character. For the general law of charities, and the powers of the Charity Commissioners and of the Board of Education under the Charitable Trusts Act, see title CHARITIES, Vol. IV., pp. 101 *et seq.*

(*y*) See p. 117, *post*.

PART I. Introduction.

and teachers, including certain non-statutory rules (*z*), likewise do not admit of being fitted into the general arrangement of subjects, and require to be treated under separate heads.

Part II.—Central Authorities.

SECT. 1.—*The Board of Education.*

SUB-SECT. 1.—*Constitution.*

Principal central authority.

12. The principal central authority dealing with education are the Board of Education. The Board are a statutory body, consisting of a President, the Lord President of the Council (unless he be the President of the Board), the Principal Secretaries of State, the First Lord of the Treasury, and the Chancellor of the Exchequer. The Board are deemed to be established upon the appointment of the President (*a*). Their legal title is "the Board of Education," and the Board may sue and be sued in that name (*b*).

President, officers, and expenses.

13. The President of the Board is appointed by, and holds office at the pleasure of, the Crown. His salary, which may not exceed £2,000 annually, is fixed by the Treasury. He may be a member of the House of Commons (*c*).

The Board may, with the sanction of the Treasury, appoint such officers and servants as they think necessary, at a remuneration to be fixed by the Treasury. One secretary of the Board may be a member of the House of Commons (*d*).

The expenses of the Board, including the salary of the President, are payable out of moneys provided by Parliament (*e*).

Consultative Committee.

14. By Order in Council, under statutory authority, a committee, known as the Consultative Committee, has been established

(*z*) See p. 122, *post*. For various forms as to educational matters, see Encyclopædia of Forms, Vol. XVI., pp. 569 *et seq.*

(*a*) Board of Education Act, 1899 (62 & 63 Vict. c. 33), s. 1 (1), (2), (5).

(*b*) *Ibid.*, s. 7. A writ of *certiorari* and a writ of mandamus were issued against the Board in *R.* v. *Board of Education*, [1909] 2 K. B. 1045; affirmed (1910) 26 T. L. R. 422, C. A.; see also *Ex parte Cardiff Corporation* (1904), 20 T. L. R. 317. The official seal of the Board is officially and judicially noticed and may be authenticated in the prescribed manner. Documents purporting to be instruments issued by the Board of Education and to be sealed with that seal so authenticated, or to be signed by a secretary or any person authorised by the President or some member of the Board to act on behalf of a secretary (*e.g.*, an assistant secretary), are received in evidence and treated as proved in the absence of evidence disproving them. Any instrument purporting to have been made or issued by the President, or any member of the Board, is conclusively proved by a certificate to that effect, signed by the President, or a member of the Board (*ibid.*, s. 7). See also s. 83 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), as to proving notices and other documents of the Board of Education, and the application of the Documentary Evidence Act, 1868 (31 & 32 Vict. c. 37). See also Documentary Evidence Act, 1882 (45 & 46 Vict. c. 9); and title EVIDENCE.

(*c*) Board of Education Act, 1899 (62 & 63 Vict. c. 33), ss. 1 (4), 6 (2), 8 (1).

(*d*) *Ibid.*, ss. 6 (1), 8 (2). The office of Vice-President of the Committee of the Privy Council on Education was abolished by s. 1 of the Act, upon the occurrence of the first vacancy in the office.

(*e*) *Ibid.*, s. 6 (2).

for the purpose of advising the Board of Education on any matter referred to the committee by the Board. The committee must consist, as to not less than two-thirds, of persons qualified to represent the views of universities and other bodies interested in education. The draft of any Order in Council with reference to the committee must be laid before each House of Parliament for not less than four weeks during the sitting of the House, before being submitted to the King in Council (*f*).

SUB-SECT. 2.—*Functions in General.*

Functions generally.

15. The Board are expressly charged with the superintendence of matters relating to education in England and Wales (*g*). All powers formerly exercised by the Education Department are now exercised by the Board of Education, and the latter expression is substituted for the former in all enactments and documents. The powers of the Science and Art Department are also vested in the Board (*h*). In respect of certain institutions the Board exercise directly the functions of provision and maintenance (*i*), but their main functions are of a supervisory nature. The bulk of the moneys annually provided by Parliament for educational purposes are appropriated for distribution by the Board. By imposing conditions upon grants made, out of the moneys so provided, to local authorities, to governors or managers of schools, and to other persons engaged in educational work, the Board are enabled to exercise an extensive practical control over education provided or aided by the State in England and Wales (*k*). The Board, further, by their conditions for making such grants in respect of schools and colleges, can exercise control over the greater part of the teaching profession (*l*), and, in particular, through the conditions of grants for public elementary schools, the Board settle the conditions upon which teachers are recognised as certificated teachers for the purposes of the official standard of staffing in those schools, and

(*f*) Board of Education Act, 1899 (62 & 63 Vict. c. 33), ss. 4, 5.

(*g*) *Ibid.*, s. 1 (1). For the transfer to the Board of Education of certain educational powers of the Charity Commissioners, and the power to transfer powers of the Board of Agriculture and Fisheries, see pp. 13, 15, *post*. For some functions of the Board with reference to children in factories and workshops, see pp. 69, 70, *post*.

(*h*) *Ibid.*, s. 2 (1). The Education Department meant the Lords of the Committee for the time being of the Privy Council appointed for education (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 12 (6)). The committee was constituted by Order in Council, dated 10th April, 1839. The Department of Science and Art, after a previous existence as a department of the Board of Trade, and afterwards as a department of the Education Department, was separately incorporated by charter in 1864. For the history, relations, and functions of the two departments, see the judgment of WILLS, J., in *R.* v. *Cockerton*, [1901] 1 K. B. 322.

(*i*) *E.g.*, the Royal College of Art, the Victoria and Albert Museum, the Science Museum (all at South Kensington), the Geological Survey and Geological Museum (at Jermyn Street). The Board also conduct certain examinations and grant certificates.

(*k*) See p. 48, *post*.

(*l*) For the power of a student, desirous of entering the teaching profession, to bind himself as to his training and career in consideration of the grants of the Board, see p. 127, *post*. For a case where the court directed, at the instance of the trustees, a scheme to be settled to enable a school subject to charitable trusts to comply with the regulations of the Board for secondary schools, see *Re Queen's School, Chester* (1910), 26 T. L. R. 297.

SECT. 1. The Board of Education.

also control, subject to statutory regulations, the arrangements for granting to certificated teachers superannuation and other annuities or allowances (*m*). The statutory powers and duties of local education authorities are in many matters exercisable only subject to the consent, approval, or direction of the Board, and the Board have special powers to take action in the event of default on the part of a local education authority (*n*). The Board also exercise some important functions in respect of educational charities (*o*).

SUB-SECT. 3.—*Higher Education.*

Grants to, and inspection of, higher education.

16. The Board of Education make grants, out of moneys provided by Parliament, to local education authorities, and other bodies and persons, in aid of higher education, and in particular in aid of training colleges for teachers, institutions for the instruction of pupil teachers in public elementary schools, secondary schools, technical schools, evening schools, and other institutions of an educational character. The conditions upon which the grants are made are at the discretion of the Board, subject to the Appropriation Act for the year, and are embodied in regulations issued annually by the Board (*p*). The Board are expressly empowered to inspect schools supplying secondary education and desiring to be inspected, and after consulting the Consultative Committee may utilise any university or other organisation for the purpose of such inspection. The terms upon which the inspection is made are settled by the Board with the consent of the Treasury (*q*).

To be consulted by local education authorities.

The Board must be consulted by a local education authority before the authority takes any steps in fulfilment of its duty with respect to the supply of higher education (*r*).

SUB-SECT. 4.—*Elementary Education.*

Sufficiency of school accommodation.

17. The Board of Education determine what amount of accommodation in public elementary schools is necessary in any area, and such accommodation as the Board think necessary must be supplied by the local education authority of that area (*s*).

Conditions of parliamentary grants.

18. The Board settle in their minutes, subject to statutory directions, the conditions required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant, and in accordance with which a public elementary school is required to be conducted by the local education authority and the managers (*t*). These minutes are issued annually in a document commonly

(*m*) For public elementary schools, see p. 29, *post*; for elementary school teachers' superannuation, see p. 127, *post*.

(*n*) See p. 12, *post*.

(*o*) See p. 13, *post*.

(*p*) See p. 6, *ante*, and p. 48, *post*. For the distinction between higher and elementary education, see p. 18, *post*.

(*q*) Board of Education Act, 1899 (62 & 63 Vict. c. 33), s. 3 (1). For the power of county councils and county borough councils to contribute to the cost of such inspection, see p. 23, *post*.

(*r*) Education Act, 1902 (2 Edw. 7, c. 42), s. 2 (1); and see p. 22, *post*.

(*s*) For public elementary schools, see p. 29, *post*; and for the supply, provision, and necessity of such schools, see pp. 25, 26, *post*. For the power of the Board of Education to obtain returns as to the amount of school accommodation, see note (*c*) on p. 14, *post*.

(*t*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), ss. 7 (4), 97. For parliamentary grants generally, see p. 6, *ante*, and p. 50, *post*. For the

called the Code. No such minute of the Board comes into force until it has lain on the table of both Houses of Parliament for not less than a month (*a*).

The Board may not make any parliamentary grant in aid of any elementary school unless it is a public elementary school, or in aid of building, enlarging, improving, or fitting up any elementary school (*b*).

The minutes of the Board settling the conditions of grant must provide that no grant be made in respect of any instruction in religious subjects, and may not require that a school shall be in connection with a religious denomination, or that religious instruction shall be given in the school, and may not give any preference or advantage to a school on the ground that it is or is not provided by a local education authority (*c*).

The minutes must also provide that the income of public elementary schools is to be applied only for the purposes of public elementary schools (*d*).

All parliamentary grants must be paid to the local education authority (*e*).

Small population grant.

19. The Board are expressly empowered to make extra grants in aid of public elementary schools in districts having small populations, and to determine in their minutes the special conditions as to efficiency to be imposed for the purposes of such grants (*f*).

Fee grant.

The main conditions and scheme for the distribution of the fee grant are settled by statute (*g*), but the Board of Education are

direct imposition by Parliament of maintenance and control by a local education authority, as conditions of grant, see p. 30, *post;* for definition and conduct of public elementary schools generally, see pp. 25, 29, *post;* for the powers of managers to fulfil the conditions of grant, see p. 39, *post.* Besides the express limitations upon the Board's powers in respect of the conditions of grants stated in the text, the Board, *semble*, are bound to observe the general provisions of the Education Acts; see *per* CHANNELL, J., in *Wilford* v. *West Riding of Yorkshire County Council*, [1908] 1 K. B. 685; see also *R.* v. *Cockerton*, [1901] 1 K. B. 322; affirmed, *ibid.*, 726, C. A.; *Dyer* v. *London School Board*, [1902] 2 Ch. 768, C. A. In the case of special schools for blind, deaf, defective, or epileptic children, express power is given to the Board of Education to make grants notwithstanding statutory restrictions (see p. 45, *post*); a similar exception is made in the case of the small class of schools coming within s. 15 of the Education Act, 1902 (2 Edw. 7, c. 42), being marine schools or schools attached to institutions (see note (*k*), p. 29, *post*).

(*a*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 97.

(*b*) *Ibid.*, s. 96; and see references in note (*t*), *supra*, as to public elementary schools, especially marine schools and schools attached to institutions. The Appropriation Acts for the years 1907, 1908, and 1909 have respectively contained in the title to the Education Vote [Sched. II., Civil Service, Class IV.] the words "including grants for the building of new public elementary schools," and the Board of Education have treated these words as making it lawful for them to make grants to local education authorities in aid of building new public elementary schools, notwithstanding the unrepealed provisions of the second paragraph of s. 96 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75); compare Parliamentary Debates, 1907, Vol. 171, pp. 66, 975; Vol. 178, pp. 65, 1190; Vol. 181, p. 719; 1908, Vol. 193, p. 1796.

(*c*) *Ibid.*, s. 97. For inspection of religious instruction, see pp. 30, 38, *post.*

(*d*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 20.

(*e*) Education Act, 1902 (2 Edw. 7, c. 42), s. 18 (2), see pp. 47, 49, *post.*

(*f*) See p. 49, *post.*

(*g*) For meaning of "fee grant" and the conditions required to be fulfilled in public elementary schools accepting the fee grant, see pp. 30, 50, *post.*

SECT. 1. The Board of Education.

empowered to determine by regulations the times and manner of its payment, and may pay the fee grant notwithstanding a failure to comply with the statutory conditions, if they are satisfied that there was a reasonable excuse for such failure, and in that case must make a deduction from the grant equal to the amount, if any, by which the amount received from fees has exceeded the amount allowed by the statutory conditions (*h*).

Grant under Education Act, 1902.

The conditions and scheme of distribution of the parliamentary grant under s. 10 of the Education Act, 1902 (*i*), are settled in that Act, but the Board compute the average attendance of scholars for the purpose of the section.

Grants to special schools.

The Board settle in their minutes the conditions upon which they make grants in aid of schools or classes certified by them for blind, deaf, defective, and epileptic children, and may make such grants, notwithstanding that the schools do not fulfil the conditions applicable in the case of public elementary schools (*k*).

Inspection of public elementary schools.

20. The Board have power, through His Majesty's inspectors of schools, to inspect any public elementary school (*l*).

SUB-SECT. 5.—*Default of Local Education Authority.*

Default of local education authority.

21. If a local education authority fail to fulfil any of their duties under the Education Acts, 1870 to 1902, and, in particular, fail to provide such public school accommodation as they are required to provide, the Board of Education may, after holding a public inquiry, make such order as they think necessary or proper for the purpose of compelling the authority to fulfil their duty, and such an order may be enforced by mandamus (*m*). The Board may also, in the event of such default as respects any elementary school, make orders to regularise any situation to which such default may give rise, and repay to the managers any expenses properly incurred by them in making good the default of the authority. Any sums so paid by the Board are a

(*h*) Elementary Education Act, 1891 (54 & 55 Vict. c. 56), s. 1 (2).

(*i*) 2 Edw. 7, c. 42, s. 10; and see p. 50, *post*.

(*k*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 12; Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 7; and see pp. 40, 45, *post*.

(*l*) See p. 30, *post*. The term "His Majesty's inspectors" in the Education Acts means the inspectors of schools appointed by His Majesty on the recommendation of the Board of Education (Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 3). For some functions with reference to recognised efficient schools under the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), see p. 76, *post*.

(*m*) Education Act, 1902 (2 Edw. 7, c. 42), s. 16. The remedy by order and mandamus is substituted for former remedies under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), ss. 63—66; it was applied in *A.-G.* v. *West Riding of Yorkshire County Council*, [1907] A. C. 29, and does not always exclude other remedies (*Wilford* v. *West Riding of Yorkshire County Council*, [1908] 1 K. B. 685, where CHANNELL, J., distinguishes misfeasance from non-feasance for the purposes of the section). The statutory remedy applies to duties under other Acts expressed to be duties under the Education Act, 1902, *e.g.*, duties under s. 13 of the Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43). As to mandamus, see title CROWN PRACTICE, Vol. X., p. 106.

debt from the authority to the Crown, and may also be deducted from any parliamentary grants due to the authority (*n*).

If a local education authority fail to make bye-laws for their area requiring children to attend school, the Board, instead of proceeding by order and mandamus, may themselves make bye-laws for the area, and any such bye-laws will have effect as though they were bye-laws duly made by the authority (*o*).

Failure to make bye-laws.

If a local education authority fail to make a scheme establishing an education committee, the Board may, in accordance with statutory rules, make a scheme for the authority by provisional order, and obtain the confirmation of the order by Parliament (*p*).

Failure to establish education committee.

SUB-SECT. 6.—*Educational Charities.*

22. The Board of Education exercise, with certain minor exceptions, the powers of the Charity Commissioners relating to charities solely educational in character (*q*), including the special powers, originally belonging to the Commissioners for the purposes of the Endowed Schools Acts, which were transferred to the Charity Commissioners in 1874 (*r*). The Board also exercise minor functions in respect of certain charities applicable in substance for the purposes of elementary education formerly exercised by the Education Department (*s*).

Powers of Charity and Endowed School Commissioners, and Education Department.

The Board are, for the purposes of the Charitable Trusts Acts, persons interested in any elementary school and its endowment, to which these Acts apply (*a*).

(*n*) Education (Local Authority Default) Act, 1904 (4 Edw. 7, c. 18).

(*o*) Elementary Education Act, 1880 (43 & 44 Vict. c. 23), s. 2; Education Act, 1902 (2 Edw. 7, c. 42), Sched. III. (9). For bye-laws, see p. 58, *post*.

(*p*) Education Act, 1902 (2 Edw. 7, c. 42), ss. 17 (7), 22. For schemes for education committees, see p. 19, *post*; for provisional orders, see title PARLIAMENT.

(*q*) Board of Education Act, 1899 (62 & 63 Vict. c. 33), s. 2 (2), and Orders in Council made thereunder (7th August, 1900, 24th July, 1901, 11th August, 1902; Statutory Rules and Orders Revised, Vol. IV., Education, England, pp. 1, 4, 6). The Act (s. 2 (2)) and the Orders empower the Charity Commissioners to determine whether a charity or part of a charity is of an educational character for the purposes of the Act and the Orders; such a determination by the Commissioners is merely part of the machinery for adjusting as between them and the Board of Education the funds and property of the charity, and does not finally restrict to educational purposes the part allotted to the jurisdiction of the Board, or prevent it being applied by a subsequent scheme to other purposes (*Re Betton's Charity*, [1908] 1 Ch. 205). The power to appoint official trustees of charitable funds, and to make vesting orders to or from the official trustees of charitable funds or the official trustee of charity lands, is reserved by the Orders in Council to the Charity Commissioners. The members and officers of the Board of Education exercise concurrently with the Charity Commissioners the compulsory powers of the Charity Commissioners and Assistant Commissioners with reference to inquiries, accounts, attendance and examination of witnesses, and administering of oaths (Order in Council, 7th August, 1900). See, generally, title CHARITIES, Vol. IV., p. 302.

(*r*) For the powers of the Commissioners for the purposes of the Endowed Schools Acts and the provisions of these Acts, see p. 99, *post*.

(*s*) As to these powers, which relate to certain charities excluded from the operation of the Endowed Schools Acts, see p. 115, *post*.

(*a*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 78.

SECT. 1. The Board of Education.

SUB-SECT. 7.—*Inquiries, Returns, and Reports.*

Public inquiries.

23. The Board of Education may hold a public inquiry for the purpose of the exercise of any of their powers or duties under the Education Act, 1902, in accordance with a prescribed procedure. The inquiry must be held, after due notice, by a person appointed by the Board, in or near the place to which the subject of the inquiry relates, and at the inquiry the person holding it must hear and inquire into evidence, information, objections and representations, offered or made respecting the subject-matter of the inquiry, with power to adjourn from time to time. He must then report in writing the results of the inquiry to the Board, stating his opinion, with reasons, on the subject, and on the representations made at the inquiry. The Board must deposit a copy of the report with the local education authority, and must publish notice of the deposit. The Board may further order the costs of the proceedings and inquiry to be paid by the local education authority or by the applicants for the inquiry as they think just, and the amount may be recovered as a debt (*b*).

Returns and reports.

24. The Board of Education have power to require returns from local education authorities both with regard to elementary and higher education (*c*), and must make to Parliament a general annual report, and special reports relating to the exercise by them of particular powers (*d*).

SECT. 2.—*Other Central Authorities.*

Local Government Board.

25. The Local Government Board have special functions regarding education under poor law authorities in respect of which the Board, as the successor of the Poor Law Commissioners, are the controlling and supervising authority (*e*). In addition to these functions the Board, in their capacity of central authority for local government purposes in general, exercise many powers and duties which directly or indirectly affect the educational powers of local authorities, as, for instance, the sanctioning of loans and the audit of accounts (*f*).

(*b*) Education Act, 1902 (2 Edw. 7, c. 42), s. 23 (10) (see also *ibid.*, s. 16); Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 73.

(*c*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 95; Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 15 (including councils with concurrent powers only in respect of higher education). For rules relating to special returns for the purpose of ascertaining whether there is a deficiency of elementary school accommodation, see Elementary Education Act, 1870 (33 & 34 Vict. c. 75), ss. 67—72, and Elementary Education Act, 1873 (36 & 37 Vict. c. 86), s. 19.

(*d*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 100. For special functions in respect of which particular reports must be made, see pp. 25, 45, 67, 107, *post*.

(*e*) For education under the poor law, see p. 81, *post*.

(*f*) For the Local Government Board's powers in their general capacity, see title LOCAL GOVERNMENT. Various particular powers are stated in this article incidentally to the statement of the educational powers and duties of local authorities. For the powers of the Local Government Board with reference to the twopenny rate limit for higher education, see p. 23, *post*. For local inquiries

SECT. 2. Other Central Authorities.

The Home Office is the central authority for education in reformatory and industrial schools, all such schools being supervised and controlled by the Secretary of State (*g*).

Board of Agriculture.

The Board of Agriculture and Fisheries are expressly empowered to inspect and assist education in agriculture and forestry, not being education given in public elementary schools (*h*).

Treasury.

The Treasury makes grants in aid of schools under the Welsh Intermediate Education Act, 1889, and must for that purpose be satisfied by inspection that the efficiency of the schools is satisfactory (*i*). The Treasury also exercises powers in regard to the system of elementary school teachers' superannuation (*j*), and in regard to the assessment of compensation to officers of local authorities (*k*).

Part III.—Powers and Duties of Local Education Authorities.

SECT. 1.—*Outline of System.*

The Education Acts.

26. The main powers and duties of local education authorities are exercised under the Education Acts, 1870 to 1909 (*l*). The effect of these Acts cannot be appreciated without a reference to their history. The first of them, the Elementary Education Act, 1870, set

by the Local Government Board in respect of their functions under the Education Act, 1902 (2 Edw. 7, c. 42), see *ibid.*, s. 23 (9).

(*g*) For reformatory and industrial schools and the powers of the Home Office, see p. 70, *post*.

(*h*) Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 2 (2). See title AGRICULTURE, Vol. I., p. 298. Administrative powers of other Government departments with reference to agriculture may be transferred by Order in Council to the Board of Agriculture and Fisheries, subject to an appeal to Parliament (*ibid.*, s. 4), and the powers of the Board of Agriculture relating to education may be transferred to the Board of Education (Board of Education Act, 1899 (62 & 63 Vict. c. 33), s. 2 (2)); see p. 8, *ante*. For the executive arrangements for the co-ordination of the work of the two departments, see Parliamentary Paper [Cd. 4886] of 22nd September, 1909.

(*i*) See p. 113, *post*.

(*j*) See p. 120, *post*.

(*k*) As to compensation to officers, see note (*o*), p. 16, *post*; and title PUBLIC AUTHORITIES AND PUBLIC OFFICERS.

(*l*) For these Acts, see note (*r*), p. 6, *ante*. Prior to the Education Act, 1902 (2 Edw. 7, c. 42), the Acts were citable as the Elementary Education Acts, 1870 to 1900 (see Elementary Education Act, 1900 (63 & 64 Vict. c. 53), s. 9). For definition of terms, see Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 3 ("inspectors," "managers," "teacher," "parent," "elementary school," "schoolhouse," "vestry," "ratepayer," "parliamentary grant"); Education Act, 1902 (2 Edw. 7, c. 42), s. 24 ("powers," "duties," "property," "liabilities," "college," "trust deed"). For the powers of local education authorities in respect of industrial schools under the Children Act, 1908 (8 Edw. 7. c. 67), see p. 80, *post*; county councils and county borough councils also exercise functions in respect of reformatory schools under that Act, but not in their capacity of local education authority; see p. 73, *post*. A local education authority which is a borough or urban district council may be a library authority under the Public Libraries Act, 1892 (55 & 56 Vict. c. 53), and have powers thereunder to provide schools for science and art; see title LOCAL GOVERNMENT.

SECT. 1. Outline of System.

School boards and school attendance committees.

up school boards for all districts insufficiently supplied with elementary schools, with a duty to supply public elementary schools for those districts, and further regulated the conduct of public elementary schools, including those not provided by a school board but by private persons, and commonly known as voluntary schools. The latter class of schools had been founded prior to 1870, and continued to be founded afterwards with the assistance of annual grants, and in some instances of building grants, from the Education Department. The only State control over them was the supervision of the department and its inspectors, which was a requisite for earning the grants, and aimed only at securing that the grants should not be paid unless the conditions imposed by the department, and those imposed after 1870 by statute, were fulfilled (*m*). School boards, when first established in 1870, were empowered, and subsequently were required, to enforce upon parents compulsory elementary education. In districts where there were no school boards this duty was allotted to school attendance committees (*n*).

Local education authorities.

27. By the Education Act, 1902, school boards and school attendance committees were abolished in all places outside London, and their functions were transferred to local education authorities, namely, councils of counties and county boroughs, and of boroughs and urban districts of a certain population, to be exercised throughout their area, including places where previously there had been no school boards. The Act was extended to London, with minor modifications, by the Education (London) Act, 1903. Every part of England and Wales is within the area of some local education authority. The Act of 1902 further gave local education authorities two important functions never exercised by school boards—the larger part of the control and maintenance of voluntary schools, and, in the case of county councils and county borough councils, general powers to supply higher education. Some limited powers in respect of higher education previously exercised by certain municipal authorities, other than school boards, became at the same time merged in the general powers of local education authorities (*o*).

(*m*) For the history from authoritative sources, see *R.* v. *Cockerton*, [1901] 1 K. B. 322; affirmed, *ibid.*, 726, C. A.; *A.-G.* v. *West Riding of Yorkshire County Council*, [1907] A. C. 29; see also p. 6, *ante*. For the Education Department, see p. 9, *ante*.

(*n*) For compulsory education and the growth of the functions of local authorities in respect of it, see note (*i*) on p. 58, *post*.

(*o*) For the transfer of educational functions from the bodies previously exercising them by the Education Act, 1902 (2 Edw. 7, c. 42), and modification of Acts, see, as to higher education, p. 22, *post;* as to elementary education, p. 28, *post;* as to school attendance and compulsory education, p. 54, *post;* as to blind, deaf, defective and epileptic children, p. 40, *post*. The Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 120, applies, with the necessary modifications, to compensation to officers transferred or affected by the passing of the Education Act, 1902 (2 Edw. 7, c. 42); and the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 68, applies to any adjustment of property and liabilities required for the purposes of the Act (see Education Act, 1902 (2 Edw. 7, c. 42), Sched. II. (21) and (22)). For compensation, adjustments, and transitory provisions in Local Government legislation, see, generally, title LOCAL GOVERNMENT; for instances of claims for compensation arising under the Education Act, 1902 (2 Edw. 7, c. 42), see *R.* v. *London County Council, Ex parte*

SECT. 1. Outline of System.

The main powers and duties of local education authorities now consist of a general duty, in the case of county councils and county borough councils, to supply and aid the supply of higher education, and, in respect of elementary education, to provide and maintain public elementary schools, and to enforce compulsory elementary education (*p*). Special powers and duties are also placed upon them with respect to blind, deaf, defective, and epileptic children (*q*), and with respect to industrial schools (*r*).

SECT. 2.—*Classification and Constitution.*

SUB-SECT. 1.—*Classification.*

What are local education authorities.

28. The following are local education authorities:—For the purposes of both elementary and higher education, councils of counties and councils of county boroughs; for the purpose of elementary education only, councils of boroughs with a population of over 10,000, and councils of urban districts with a population of over 20,000, according to the census of 1901 (*s*). The area of a county council is the county, excluding the area of any county borough in the county, and excluding also, for the purpose of elementary education, the areas of boroughs and urban districts which are local education authorities for that purpose (*t*). The area of a county borough council, borough council, or urban district council is the county borough, borough, or district.

Councils with concurrent powers.

29. The council of every non-county borough or urban district have certain powers to supply or aid the supply of higher education concurrently with the county council, but are not, in either case, a local education authority for the purpose of higher education (*a*).

Distinction between higher and elementary education.

30. There is a statutory distinction between higher and elementary education, though neither term is explicitly defined in the Education Acts.

Norris, [1906] 1 K. B. 346; *R.* v. *London County Council, Ex parte Scriven* (1907), 23 T. L. R. 493; for instances of adjustments being required, see *Re Wallsend Borough Council and Northumberland County Council*, [1906] 2 Ch. 506; *Hebburn Urban District Council* v. *Hedworth Monkton and Jarrow United District School Board* (1904), 20 T. L. R. 244; *A.-G.* v. *Essex County Council* (1907), 71 J. P. 557. School boards also possessed functions in respect of industrial schools under the Elementary Education Acts; for the history etc. of these powers, see note (*d*), p. 71, *post*. For the distinction of elementary and higher education under the Education Acts, see p. 18, *post*.

(*p*) See for higher education, p. 22, *post*; and for elementary education, p. 24, *post*. For councils with "concurrent" higher education powers, see p. 23, *post*.

(*q*) See p. 40, *post*.

(*r*) See p. 73, *post*.

(*s*) Education Act, 1902 (2 Edw. 7, c. 42), ss. 1, 23 (8). See title LOCAL GOVERNMENT for the election, constitution, areas, and general attributes of the local authorities in question. "Council" in the case of a borough means the corporation consisting of the mayor, aldermen, and burgesses, acting by their council (*Re Leeds Institute of Science, Art and Literature and Leeds City Council*, [1909] 1 Ch. 500). For the distinction between higher and elementary education, see *infra*.

(*t*) For the exemption of such boroughs or districts from the county rate for education, see p. 47, *post*; as to voting at county council meetings of councillors representing such boroughs or districts, see p. 19, *post*.

(*a*) See p. 23, *post*.

SECT. 2. Classification and Constitution.

Higher education sometimes is called "education other than elementary," and sometimes is designated by a reference to the purpose of Part II. of the Education Act, 1902, the general power to provide higher education being given to local education authorities by that part of the Act, in substitution for narrower powers under other Acts (*b*). The training of teachers and the maintenance of evening schools are, for statutory purposes, higher education, and, generally, the supply by a local education authority of any education given otherwise than as part of the instruction of a public elementary school is higher education. Elementary education is ordinarily designated by a reference to the purposes of Part III. of the Education Act, 1902, which transferred to local education authorities the functions of school boards and school attendance committees, with the amendments necessary to bring voluntary schools into the system of public elementary education established by the Act. The elementary education to be provided by a local education authority is limited to education in a public elementary school given, under the regulations of the Board of Education, to scholars who at the close of the school year will not be more than sixteen years of age, subject to the power of the Board to extend the limit of age in certain special circumstances (*c*). The power of a local education authority in respect of elementary education includes the power to aid, by scholarships or bursaries, the instruction in public elementary schools of scholars from the age of twelve up to sixteen, or up to the limit of any extended age sanctioned by the Board (*d*), and also powers with respect to the provision of play centres, vacation classes, medical inspection and attendance, and provision of meals for children attending public elementary schools (*e*). If any question arises whether any purpose for which a council wish to exercise any powers under the Education Acts is a purpose of higher education or of elementary education (*i.e.*, a purpose of Part II. or of Part III. of the Education Act, 1902), that question is to be determined finally by the Board of Education (*f*).

(*b*) Part II. of the Education Act, 1902 (2 Edw. 7, c. 42), is headed "Higher Education." See note (*i*) on p. 22, *post*, for the substitution of that Act for previous legislation. The power of a council under Part II. of the Act includes the promotion of the co-ordination of all forms of education; see p. 22, *post*.

(*c*) Education Act, 1902 (2 Edw. 7, c. 42), s. 22. Schools for blind, deaf, defective, and epileptic children and industrial schools are in a special class; they need not be conducted as public elementary schools, but nevertheless come within the statutory sphere of elementary education; see p. 11, *ante*, and p. 45, *post*. The nature of school board powers, the history of the institutions connected with State-aided higher and elementary education, and the meaning of those terms, were elaborately discussed in *R.* v. *Cockerton*, [1901] 1 K. B. 322; affirmed, *ibid.*, 726, C. A. Part III. of the Education Act, 1902 (2 Edw. 7, c. 42), is headed "Elementary Education." In this article the terms "higher education" and "elementary education" are ordinarily used, for brevity and convenience, in place of the terms "purpose of Part II." and "purpose of Part III. of the Education Act, 1902" (2 Edw. 7, c. 42), respectively. For public elementary schools, see note (*k*) on p. 29, *post*.

(*d*) Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 11.

(*e*) *Ibid.*, s. 13. As to provision of meals, see p. 32, *post*.

(*f*) *Ibid.*, s. 10.

31. When any question arises before a county council relating only to elementary education, the county councillors elected for an electoral division, consisting, wholly or in part, of a borough or urban district whose council are a local education authority, may not vote upon the question (*g*).

Relinquishing powers.

32. The council of any non-county borough or urban district may at any time, by agreement with the council of the county in which the borough or urban district is situated, and with the approval of the Board of Education, relinquish in favour of the council of the county any of their powers and duties as local education authorities, or any of their powers to supply or aid the supply of higher education, and, in that case, the powers and duties so relinquished cease (*h*).

SUB-SECT. 2.—*Education Committees.*

Duty to establish education committees.

33. Every local education authority, and every council having only concurrent powers in respect of higher education (*i*) (unless such council determine that in their case it is unnecessary to do so), must establish one or more education committees in accordance with statutory requirements.

Constitution.

The education committee must be constituted in accordance with a scheme made by the authority or council, and approved by the Board of Education (*j*). The scheme must comply with certain statutory provisions with respect to the procedure for making and approving it, and with respect to the composition of the committee. In particular, it must provide for the appointment of at least a majority of the committee by the authority or council, and for the appointment of persons experienced in education, and for the inclusion of women (*k*). The scheme may provide, for all or any educational purposes, for the constitution of a separate education committee for any area within a county, and in that case the Board must be satisfied before approving it that it pays due regard to the importance of the general co-ordination of all forms of education (*l*). A scheme when approved has statutory force, but may be revoked or varied by an amending scheme (*m*).

(*g*) Education Act, 1902 (2 Edw. 7, c. 42), s. 23 (3).

(*h*) *Ibid.*, s. 20 (b). As to adjustments and other provisions consequential upon such a relinquishment, see *ibid.*, Sched. II. (2), (8), (16), (17), (21). Where the council is a local education authority for the purpose of elementary education (p. 17, *ante*), and the powers relinquished include powers in respect of that purpose, the area of the council becomes, for that purpose, part of the area of the county council.

(*i*) As to these councils see p. 23, *post*.

(*j*) Education Act, 1902 (2 Edw. 7, c. 42), s. 17 (1). For the power of the Board of Education to act in the default of the authority in making a scheme, see p. 13, *ante*.

(*k*) *Ibid.*, s. 17 (3), (6); and see, as to consequential provisions, s. 21 (2). The members appointed by the authority or council must be members of it, unless, in the case of a county council, the council otherwise determines. Sub-s. (6) of s. 17 does not compel the Board of Education to publish a scheme which they have decided to refuse to approve (*Ex parte Cardiff Corporation* (1904), 20 T. L. R. 317).

(*l*) *Ibid.*, s. 17 (5), (6).

(*m*) *Ibid.*, s. 21 (3). For a case where a scheme was construed, and it was

SECT. 2. Classification and Constitution.

Wales and Monmouthshire.

34. A scheme, in the case of any county council or county borough council in Wales (including Monmouthshire), must provide for the abolition of the county governing body established for the area of the council by any scheme made under the Welsh Intermediate Education Act, 1889, and for the transfer of the functions, property, and liabilities of that body to the council, and must make consequential provisions (*n*).

Disqualification.

35. No person may be a member of an education committee who by reason of holding an office or place of profit, or having any share in a contract of employment, is disqualified for membership of the council appointing the committee, but no person is so disqualified for membership of an education committee by reason only of his holding office in a school or college aided, provided, or maintained by the council. A woman is not disqualified by sex or marriage for membership of an education committee (*o*).

Powers of education committee.

36. All matters relating to the exercise by the local education authority, or other council, of their powers in respect of elementary or higher education, other than the power of raising a rate or borrowing money, stand referred to the education committee, and the authority, before exercising any such powers, must, unless they consider the matter to be urgent, receive and consider the report of the education committee (*p*). The authority may also delegate to the education committee, with or without conditions as they think fit, any of their powers, except the power of raising a rate or borrowing money (*q*).

SECT. 3.—*General Powers.*

Officers.

37. A local education authority may appoint necessary officers, including teachers for schools provided by the authority, to hold office at pleasure (*r*).

held that a council could not vary the arrangements for the retirement of members of a committee, except by an amending scheme; see *Milward* v. *Barry Urban Council*, [1904] 2 Ch. 481.

(*n*) Education Act, 1902 (2 Edw. 7, c. 42), s. 17 (8); and see, as to Welsh intermediate education, pp. 111, 114, *post*.

(*o*) *Ibid.*, ss. 17 (4), 23 (6). As to what involves disqualification for membership of a council appointing an education committee, see title LOCAL GOVERNMENT. For the purpose of such disqualification, a teacher in a school maintained, but not provided, by a local education authority is in the same position as a teacher in a school provided by the authority (*ibid.*, s. 23 (7)).

(*p*) *Ibid.*, s. 17 (2); the matters in question include all powers conferred on the authority or council expressly as local education authority, or council having "concurrent" powers, by other Acts as well as by the Education Act, 1902 (2 Edw. 7, c. 42), *e.g.*, powers under Part IV., ss. 44—93 (Industrial Schools; see p. 73, *post*), or under s. 122 (Cleansing of Verminous Children) of the Children Act, 1908 (8 Edw. 7, c. 67); see Education (Administrative Provisions) Act, 1909 (9 Edw. 7, c. 29), s. 1.

(*q*) Education Act, 1902 (2 Edw. 7, c. 42), s. 17 (2). For the effect of delegating powers with respect to the control of voluntary schools under s. 7, and generally as to the power of delegation, see *Young* v. *Cuthbert*, [1906] 1 Ch. 451; *Ching* v. *Surrey County Council*, [1910] 1 K. B. 736, C. A. See also titles AGENCY, Vol. I., p. 213; LOCAL GOVERNMENT; PUBLIC AUTHORITIES AND PUBLIC OFFICERS, generally, for the effect of the delegation by a local authority of powers to committees or other persons.

(*r*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 35. As to school

38. A local education authority may appear in legal proceedings by their clerk, or by some member of the authority authorised by a resolution of the authority (*s*).

Returns.

39. A local education authority must make returns to the Board of Education when required by the Board to do so (*t*).

Local education authority as trustee of charity.

40. A local education authority may be constituted as trustees for any educational charity, and may accept real or personal property on trust for any purposes connected with education, subject to the limitation that no trust may be accepted, so far as regards elementary education, the purposes of which are inconsistent with the principles of the prohibition against religious catechisms or formularies distinctive of any particular denomination being taught in schools provided by the authority (*a*).

Guides and conveyances.

41. A local education authority may provide vehicles, and pay reasonable travelling expenses, for teachers or children attending school or college, whenever the council consider such provision or payment required by the circumstances of their area, or any part of it (*b*). An authority may also provide guides or conveyances for children who, in their opinion, are by reason of any physical or mental defect unable to attend school without guides or conveyances (*c*).

Disposal of land.

42. A local education authority may sell, lease, or exchange any land or schoolhouse belonging to them and acquired for the purposes of elementary education which they do not require as though it were land belonging to a charity for the purposes of the Charitable Trusts Acts, 1853 to 1869, the Board of Education exercising the jurisdiction of the Charity Commissioners in the matter (*d*). The authority may also, with the consent of the Board, alienate any land acquired or held by them for the purposes of higher education (*e*).

Appropriation of land for other purposes.

43. A local education authority may, with the consent of the Board of Education, appropriate any land held by them in their capacity as local education authority for any other purposes, approved by the Local Government Board, connected with any

attendance officers, see p. 56, *post;* for joint officers, see p. 46, *post;* as to teachers in voluntary schools, see pp. 36, 38, *post.*

(*s*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 85, which provides that the resolution must appear on the minutes of the authority.

(*t*) See p. 14, *ante*, and references in note (*c*) thereon.

(*a*) Elementary Education Act, 1873 (36 & 37 Vict. c. 86), s. 13; see p. 34, *post*, for the prohibition in question. See also title CHARITIES, Vol. IV., p. 259. As to whether the limitation is now applicable to higher education, *quære.*

(*b*) Education Act, 1902 (2 Edw. 7, c. 42), s. 23 (1) (including councils with concurrent powers in respect of higher education); see p. 23, *post.*

(*c*) Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 3.

(*d*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 22, which, *semble*, only applies, in the case of local education authorities, so far as regards purposes of elementary education. See title CHARITIES, Vol. IV., p. 218, for the provisions of the Charitable Trusts Acts in question.

(*e*) Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 1 (6) (including councils with concurrent powers in respect of higher education). As to the application of the proceeds of sale, see *ibid.*

SECT. 3. General Powers.

other capacity of the authority (*f*), subject to certain restrictions upon user that might be objectionable (*f*).

Documents and notices

44. Special rules are provided for the service, proof of service, form, and method of publication of notices, orders, and other documents for the purposes of the Education Acts (*g*).

SECT. 4.—*Higher Education.*

SUB-SECT. 1.—*In General.*

Duty to supply, aid, and co-ordinate.

45. It is the duty of a council which is a local education authority for the purpose of higher education to consider the educational needs of their area, and to take such steps as seem to them desirable, after consultation with the Board of Education, to supply, or aid the supply, of higher education and to promote the general co-ordination of all forms of education (*h*). The authority must in carrying out this duty have regard to any existing supply of efficient schools or colleges, and to any steps already taken for the purpose of higher education under the Technical Instruction Acts, 1889 and 1891 (*i*).

(*f*) Education (Administrative Provisions) Act, 1909 (9 Edw. 7, c. 29), s. 5.

(*g*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), ss. 81—84; Elementary Education Act, 1873 (36 & 37 Vict. c. 86), s. 20; Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 45; and see note (*b*) on p. 8, *ante*, as to the Board of Education and documents.

(*h*) Education Act, 1902 (2 Edw. 7, c. 42), s. 2 (1). The power to supply and aid the supply of higher education is not confined to the education of persons resident in the area of the authority, and the authority may provide education outside their area, and may give financial assistance to students attending institutions outside their area, but, *semble*, the power must be exercised in the interests of the area (Education Act, 1902 (2 Edw. 7, c. 42), s. 23 (2); Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 12). It includes the provision of vehicles, and the payment of reasonable travelling expenses for teachers and children (Education Act, 1902 (2 Edw. 7, c. 42), s. 23 (1)). For the power to combine with or contribute to other councils, see p. 45, *post*. For the distinction of elementary and higher education, see p. 18, *ante*. For a limit upon the amount which a county council may spend out of the rates upon higher education see p. 23, *post*. For the application of the "whisky money" to higher education, see p. 48, *post*.

(*i*) *Ibid.*, s. 2 (2). The Technical Instruction Acts, 1889 and 1891 (52 & 53 Vict. c. 76; 54 & 55 Vict. c. 4), were repealed by the Education Act, 1902 (2 Edw. 7, c. 42), Sched. IV. As to an adjustment of the liabilities of an urban council under those Acts, see *ibid.*, Sched. II. (4). The Education Act, 1902 (2 Edw. 7, c. 42), contains no express transfer of powers in respect of higher education, except as regards Welsh intermediate schools, and the power to supply, and aid the supply, of higher education replaces, with wider effects, the power of a local authority under the Technical Instruction Acts; for the substitution of Part II. of the Education Act, 1902 (2 Edw. 7, c. 42), in enactments and in schemes made under the Charitable Trusts Acts, the Endowed Schools Acts, or the Elementary Education Acts, for the Technical Instruction Acts, and for the application of the first-named Act to institutions established, or obligations incurred, under the Technical Instruction Acts, see Sched. III. (11) of the Education Act, 1902 (2 Edw. 7, c. 42); and for a special provision, replacing in London the provisions in the Technical Instruction Act, 1889 (52 & 53 Vict. c. 76), as to the appointment of managers or governors of rate-aided institutions, see Education (London) Act, 1903 (3 Edw. 7, c. 24), Sched. I. (9). For the transfer of powers in respect of Welsh Intermediate Education see p. 20, *ante*, and p. 114, *post*.

46. A local education authority may pay expenses incurred by the Board of Education in the inspection of secondary schools in their area (*k*).

Limit upon expenditure by county council.

47. A local education authority, which are the council of a county, may not raise out of the rates for the purposes of higher education in any year more than the amount which would be produced by a rate of 2*d.* in the pound, or such higher rate as the authority, with the consent of the Local Government Board, may fix (*a*).

SUB-SECT. 2.—*Councils with concurrent Powers.*

Powers of non-county boroughs and urban districts.

48. The council of a non-county borough or urban district, though not in either case a local education authority for the purpose of higher education, have power, concurrently with the county council, to spend such sums as they think fit for the purpose of supplying or aiding the supply of higher education, but the amount they raise out of the rates for this purpose in any year must not exceed the amount which would be produced by a rate of 1*d.* in the pound (*b*).

SUB-SECT. 3.—*Religious Instruction.*

49. In the application of money for the purpose of higher education a council must observe the following rules :—

Conscience clause for day and evening schools.

In no school or college aided or maintained by the council may any scholar attending as a day or evening scholar be required, as a condition of being admitted into or remaining in the school or college, to attend or abstain from attending any Sunday school, place of religious worship, religious observance, or instruction in religious subjects in the school or college or elsewhere, and, in furtherance of this rule, the time for religious worship or instruction must be arranged in any such school or college conveniently for the withdrawal of the scholars.

Religious conditions not to be imposed on aid.

In no school, college, or hostel, aided but not provided by the council, may the council require that any particular form of religious instruction or worship, or any religious catechism or formulary which is distinctive of any particular religious denomination, shall or shall not be taught, used, or practised.

"Provided" school to be free to all persuasions.

From no school, college, or hostel provided by the council may any pupil be excluded on the ground of religious belief, nor may any pupil attending such an institution be penalised on the ground of religious belief.

(*k*) Board of Education Act, 1899 (62 & 63 Vict. c. 33), s. 3 (2); Education Act, 1902 (2 Edw. 7, c. 42), Sched. III. (11); and see p. 10, *ante*.

(*a*) Education Act, 1902 (2 Edw. 7, c. 42), s. 2 (1); the produce of a rate for the purposes of the Act is to be estimated in accordance with regulations of the Local Government Board (*ibid.*, s. 23 (4)).

(*b*) Education Act, 1902 (2 Edw. 7, c. 42), s. 3. In the construction of the Education Act, 1902 (2 Edw. 7, c. 42), the expression "councils having power under this Act," and similar expressions, include councils having these concurrent powers in respect of higher education; compare ss. 17 (1), 18, 19 (1) of the Act. In the pages following it has sometimes been found convenient to state provisions of a consequential character with reference to local education authorities, and to refer in a note to their application to councils having such concurrent powers. As to the method of estimating the produce of a rate, see preceding note.

SECT. 4. Higher Education.

Denominational teaching in "provided" schools.

In no school, college, or hostel provided by the council may any catechism or formulary distinctive of any particular religious denomination be taught, except where the council, at the request of parents of scholars, in such manner as they think fit, allow any religious instruction to be given otherwise than at the cost of the council. In the exercise of this latter power the council must show no unfair preference to any religious denomination (*c*).

SUB-SECT. 4.—*Provision of Schools.*

Provision and appropriation of land and buildings.

50. A local education authority have the same power, exercisable in the same manner, and subject to the same provisions, for the purchase of land either compulsorily or by agreement for the purposes of higher education (*i.e.*, of Part II. of the Education Act, 1902) as they have for the purposes of elementary education (*i.e.*, of Part III. of that Act) (*d*). The authority may also, with the consent of the Board of Education, appropriate for the former purposes any land acquired by them for the latter purposes or transferred to them as successors of a school board, and may, with the consent of and after inquiry by the Local Government Board, appropriate for the purposes of higher education any land acquired by them otherwise than in their capacity as local education authority (*e*).

Transfer of science and art schools

51. A local education authority, or any council having concurrent powers in respect of higher education, may acquire schools for science or art, or literary or scientific institutions of certain kinds by arrangement with their managers, who are authorised to transfer such schools or institutions to local authorities, in the manner, and subject to the conditions and provisions, applicable to the case of the transfer of elementary schools to local education authorities under s. 23 of the Elementary Education Act, 1870 (*f*).

SECT. 5.—*Elementary Education.*

SUB-SECT. 1.—*In General.*

Duty to provide school accommodation etc.

52. It is the duty of a local education authority to provide and maintain an adequate supply of school accommodation in public

(*c*) Education Act, 1902 (2 Edw. 7, c. 42), s. 4.

(*d*) Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 1 (1). The powers conferred by this sub-section are without prejudice to any other powers (it does not apply to a council not being a local education authority but having concurrent powers in respect of higher education; see p. 23, *ante*). For the powers of a local education authority with respect to the acquisition of land for the purposes of elementary education, see p. 26, *post;* for acquisition of land by local authorities generally, see titles COMPULSORY PURCHASE OF LAND ETC., Vol. VI., p. 163; LOCAL GOVERNMENT.

(*e*) *Ibid.*, s. 1 (2) (i.), (iii.). A council having only concurrent powers in respect of higher education may similarly appropriate for the purposes of those powers, with the approval of the Local Government Board, land acquired by them under any other power (*ibid.*, s. 1 (3)). Such appropriations are without prejudice to restrictive covenants upon the land appropriated (*ibid.*, s. 1 (4)).

(*f*) Schools for Science and Art Act, 1891 (54 & 55 Vict. c. 61), as modified by the Board of Education Act, 1899 (62 & 63 Vict. c. 33), s. 2 (1). As to transfers under s. 23 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), see p. 28, *post.* For a general power on the part of trustees and public authorities to acquire and hold land for the purpose of technical and industrial institutions see p. 121, *post.*

elementary schools for their area; to enforce the laws as to the attendance of children at school, and the duties of parents and employers in respect of education; to make special provision for the education of blind or deaf children; and, subject to certain limitations, to provide for the education of children committed to industrial schools. A local education authority also has power to make special provision for the education of defective or epileptic children. These functions, broadly speaking, were the functions of school boards, and, except in respect of industrial schools, are now exercised in amended forms by local education authorities as possessors of the functions of school boards throughout their area (*g*).

SUB-SECT. 2.—*Supply of School Accommodation.*

Duty to provide schools when needed.

53. The local education authority must from time to time provide such additional accommodation in public elementary schools as is, in the opinion of the Board of Education, necessary to secure for their area a sufficient amount of public school accommodation (*h*). The amount to be provided must include a sufficient amount of accommodation without payment of fees (*i*).

Voluntary and council schools.

54. Public elementary schools may be provided by a local education authority, or by other persons (*k*). Where a local education

(*g*) For the origin and history of these powers, see p. 15, *ante*. The powers and duties of school boards and school attendance committees were conferred upon local education authorities by the Education Act, 1902 (2 Edw. 7, c. 42), s. 5, and local education authority is substituted for school board, and the area of a local education authority for school district, throughout the Elementary Education Acts and other enactments (*ibid.*, Sched. III (1)), but the substitution does not necessarily apply to wills or to trust deeds (*Re Beard's Trust, Butlin* v. *Harris*, [1904] 1 Ch. 270; *Re Smallwood, Gothard* v. *Chapman*, [1910] 1 Ch. 272, C. A.). For the powers and duties so transferred relating to the provision and maintenance of public elementary schools, as extended to include voluntary schools, see *infra*; for those relating to the education of blind, deaf, defective, and epileptic children, see p. 40, *post*; for those relating to the enforcement of the duties of parents and employers in respect to school attendance and education, see p. 54, *post*; as to industrial schools, see note (*d*) on p. 71, *post*. School boards and school attendance committees are abolished (Education Act, 1902 (2 Edw. 7, c. 42), s. 5), and their property, powers, rights, and liabilities (including those dependent on any local Act or trust deed) have been transferred to local education authorities (*ibid.*, Sched. II. (1)). The statutory transfer vested the property without further act or assurance (*Oldham Corporation* v. *Bank of England*, [1904] 2 Ch. 716, C. A.). As to transfers in a case of a school board of a united school district to different local education authorities at different dates, see *Hebburn Urban District Council* v. *Hedworth Monkton and Jarrow United District School Board* (1904), 20 T. L. R. 244, and compare *A.-G.* v. *Essex County Council* (1907), 71 J. P. 551; and as to adjustments and compensation to officers involved by the transfer of property, liabilities, and officers under the Education Act, 1902 (2 Edw. 7. c. 42), see note (*o*), p. 16, *ante*. As to the effect of the Act upon teachers' contracts with the old managing body in the case of voluntary schools, see *Jones* v. *Hughes*, [1905] 1 Ch. 180, C. A.

(*h*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), ss. 5 (now repealed) and 18; Education Act, 1902 (2 Edw. 7, c. 42), s. 5, and Sched. III. (6). For the definition of a public elementary school, see note (*k*) on p. 29, *post*. For the meaning of "necessary" in this connection, see p. 26, *post*.

(*i*) Education Act, 1902 (2 Edw. 7, c. 42), Sched. III. (5). For the rules governing the imposition of fees and charges in public elementary schools, see p. 30, *post*.

(*k*) Public elementary schools not provided by a local education authority are commonly called voluntary, or "non-provided," schools. The former term is adopted in this article (see pp. 6, 16, *ante*, as to the origin of the voluntary school

SECT. 5. Elementary Education.

Procedure for providing schools, and appeals.

authority, or any other persons, propose to provide a new public elementary school, they must give public notice of their intention to do so, and the managers of any existing school, or the local education authority (if they are not themselves the proposers), or any ten ratepayers in the area for which it is proposed to provide the school, may, within three months after the notice is given, appeal to the Board of Education against the proposal.

"Necessity" of schools.

55. The grounds of any such appeal may be that the proposed school is not required, or that a school provided by the local education authority, or a school not so provided, as the case may be, is better suited to meet the wants of the district than the school proposed (*l*). The Board of Education are to decide the appeal, and in deciding it are required to have regard to the interest of secular instruction, to the wishes of parents as to the education of their children, and to the economy of the rates (*m*). Any school built in contravention of the decision of the Board in such a case is to be treated as unnecessary (*n*).

Enlargements and transfers.

56. Any proposal to enlarge an existing public elementary school (if the enlargement appear to the Board of Education to be such as to amount to the provision of a new school), or any proposal to transfer a public elementary school to or from a local education authority, is to be treated, for the purposes of the foregoing rules, as a proposal to provide a new school (*o*).

"Necessity" in the absence of appeals.

57. If there is no appeal against the proposal, the Board of Education, on any application of the managers of an existing elementary school that the school be recognised as a public elementary school and as earning parliamentary grants, may refuse so to recognise the school, if they think it is not required. But if they refuse, and the school was not previously in receipt of a parliamentary grant, they must specially report the case to Parliament, with a statement of the reasons for their refusal (*p*).

SUB-SECT. 3.—*Provision of Schoolhouses.*

Acquisition of land and buildings.

58. A local education authority, for the purpose of providing accommodation in public elementary schools, may by building or otherwise provide schoolhouses, and improve, enlarge, and equip any schoolhouses so provided, and may purchase or lease land, or rights over land, for the purpose (*q*).

Application of Lands Clauses Acts and School Sites Acts.

59. The Lands Clauses Acts, with certain modifications, are incorporated with the statutes conferring upon local education authorities the above stated powers with respect to the acquisition of land for the provision of public elementary schools (*r*). The School

system). Schools provided by a local education authority are commonly called council, or "provided," schools.

(*l*) Education Act, 1902 (2 Edw. 7, c. 42), s. 8 (1).

(*m*) *Ibid.*, s. 9. For the necessity of existing schools, see p. 29, *post.*

(*n*) *Ibid.*, 8 (1).

(*o*) *Ibid.*, s. 8 (2), (3). For transfers and retransfers of elementary schools to or from local education authorities, see p. 28, *post.*

(*p*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 98.

(*q*) *Ibid.*, s. 19. For the appropriation of land, see Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 1 (2). For acquisition of schools by transfer, see p. 28, *post.*

(*r*) See title COMPULSORY PURCHASE OF LAND ETC., Vol. VI., p. 166.

Sites Acts also apply for that purpose, as though the local education authority were trustees or managers of a school within the meaning of those Acts. Land may be acquired by a local education authority either under the Lands Clauses Acts or the School Sites Acts, or partly under the one set of Acts and partly under the other (*a*).

Compulsory powers need Act of Parliament.

60. The provisions of the Lands Clauses Acts with reference to the purchase of land compulsorily may not be put in force by a local education authority in order to acquire land for providing public elementary schools until a provisional order has been made by the Board of Education and confirmed by Parliament (*b*).

Procedure for obtaining Act.

The local education authority, to obtain such an order, must first publish, during three consecutive weeks in October or November, a notice indicating the land proposed to be taken with certain prescribed particulars, and must then serve in a prescribed manner the owners and lessees (including reputed owners and lessees) and occupiers of the land with a notice containing certain prescribed particulars (*c*). The authority must then present to the Board a petition under their seal, containing prescribed information as to the land sought to be acquired, and praying the Board that an order may be made authorising the authority to put into force, as to that land, the compulsory powers of the Lands Clauses Acts (*d*).

Inquiry, order, and confirmation.

Upon receiving the petition, and being satisfied that the necessary formalities have been complied with, the Board may, if they think fit, proceed with the case, and may also appoint a person to inquire in the district as to the propriety of making the proposed order, and may also direct the person to hold a public inquiry to investigate the matter and report to the Board (*e*).

The Board may then make the order prayed for, with such conditions and modifications, if any, as they think fit, and in respect of the whole or some part of the land sought to be acquired. The local education authority must serve copies of the order, according to the rules respecting the service of the original notices (*f*). No

(*a*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 20. For the Lands Clauses Acts in general, see title COMPULSORY PURCHASE OF LAND ETC., Vol. VI., p. 1, and as to local education authorities, *ibid.*, p. 166 ; the Acts are incorporated for the purpose of acquisition by agreement, as well for the purpose of compulsory acquisition (see *ibid.*, p. 167, and *Kirby* v. *Harrogate School Board*, [1896] 1 Ch. 437, C. A.), also for the purpose of compensation in the case of land "injuriously affected" (see *ibid.*, p. 99, and *Clark* v. *London School Board* (1874), 9 Ch. App. 120). The main modification of the Lands Clauses Acts is as to compulsory powers ; see *infra*. Other modifications are that the provisions of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), with reference to access to the special Act are not incorporated, and that, in the case of compulsory acquisition, the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), together with the Act confirming the provisional order, is to be construed as the special Act (*ibid.*, s. 20 ; Elementary Education Act, 1873 (36 & 37 Vict. c. 86), s. 15). As to the School Sites Acts, see p. 117, *post*.

(*b*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 20 (6). As to provisional orders and their confirmation in general, and the standing orders of the Houses of Parliament regarding such confirmation, see title PARLIAMENT.

(*c*) *Ibid.*, s. 20 (2) (a), (b). For the mode of publication, see Elementary Education Act, 1873 (36 & 37 Vict. c. 86), s. 20.

(*d*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 20 (3). For forms of petition etc., see Encyclopædia of Forms, Vol. XVI., pp. 604 *et seq.*

(*e*) *Ibid.*, s. 20 (4).

(*f*) *Ibid.*, s. 20 (5).

SECT. 5. Elementary Education.

such order has any effect until confirmed by Parliament, and the Board may proceed to obtain that confirmation (*g*).

Costs in respect of compulsory acquisition.

Any expenses incurred by the Board in respect of such an order, up to an amount sanctioned by the Treasury, are to be paid by the local education authority. The Board may, if they refuse or modify the order, make such order as they think right for the allowance of the expenses, incidental to the application and inquiry, of any person whose land the authority proposed to acquire, and the expenses so allowed are to be paid by the authority (*h*).

Transfer of school to local authority.

61. A voluntary school or other elementary school subject to charitable trusts may be transferred to the local education authority, for use by the authority as a public elementary school provided by them, by an arrangement made in accordance with statutory requirements. The arrangement transferring the school is to be made by the managers, unless there is a trust deed specially providing for the alienation of the school by any other person. Consent to the transfer must be obtained from the Board of Education, from any person whose consent is required by the trust deed, and from the majority of the annual subscribers to the school (if any), being not less than two-thirds of those who are present and vote at a meeting of subscribers duly summoned for the purpose. The Board, in giving their decision, are to have regard to any objections or representations of any subscriber to the establishment of the school, or of any trustee who is not a manager.

The arrangement may convey to the local education authority such interest in the schoolhouse, whether absolute or otherwise, or such user of it, as may be agreed upon, and for a nominal payment or otherwise. The arrangement may also provide for the application of any endowment belonging to the school, and for dealing with any charges on the school, subject to certain limitations.

The transferors under such an arrangement may convey any interest in the schoolhouse or endowment, which is vested in them or in some trustee for them. But they may not transfer any property not vested in them, or a trustee for them or held in trust for the school. No such arrangement may interfere with the right of any person under the trusts of the school to use it for any particular purpose independently of the managers, except with his consent (*i*).

(*g*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 20 (6).

(*h*) *Ibid.*, s. 20 (7), (8). The expenses are in either case, *semble*, indemnity costs, and are payable, in the case of the Board's expenses, to the Treasury, and in either case according to a prescribed procedure (*ibid.*, s. 20 (8)).

(*i*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 23. The section is obviously drafted with reference to the numerous elementary schools in receipt of parliamentary grants at the date of the Act which ordinarily became public elementary schools not provided by a school board, or voluntary schools as they are here called, under the Act. For the definition of managers under the Act, see *ibid.*, s. 3. For managers of a voluntary school under the Education Act, 1902 (2 Edw. 7, c. 42), see pp. 34, 39, *post*. For cases on the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 23, compare, as regards the consents required, *National Society* v. *London School Board* (1874), L. R. 18 Eq. 608, and as regards the application of endowments affected by a transfer, *Re Poplar and Blackwall Free School* (1878), 8 Ch. D. 543; *London School Board* v. *Faulconer*, (1878), *ibid.*, 571; *Llanbadarnfawr School Board* v. *Charitable Funds* (*Official Trustees*), [1901] 1 K. B. 430, C. A. The section contains supplementary provisions as to notice to trustees, the mode of

SUB-SECT. 4.—*Maintenance and Conduct of Public Elementary Schools in General.*

SECT. 5. **Elementary Education.**

Duty to maintain and keep efficient.

62. The local education authority must maintain and keep efficient all public elementary schools (*k*) in their area which are necessary (*l*). No school for the time being recognised as a public elementary school may be considered as unnecessary, in which the average attendance, as computed by the Board of Education, is not less than thirty, but, in the case of schools below that limit, the principles applicable with reference to the provision of a new school determine the necessity of an existing school (*m*).

Religious instruction

63. It may not be required as a condition of any child being admitted into, or continuing in, a public elementary school that he shall attend or abstain from attending any Sunday school or place of religious worship, or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, from which he may be withdrawn by his parent, or that he shall, if withdrawn by his parent, attend the school on any day exclusively set apart for religious observance by the religious body to which

alienation where the trust deed contains special provisions for alienation, and the mode in which the managers are to act in assenting to the arrangement. After six months from the date of transfer the consent of the Board of Education is conclusive proof that the arrangement has been made in accordance with the section. A school so transferred may with its endowments be retransferred by the authority, according to a prescribed procedure and with the consent of the Board of Education, to managers qualified under the original trusts, subject to the repayment of sums spent on the school from loans raised by the authority or school board (Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 24. Such a transfer or retransfer counts as the provision of a new public elementary school. For form of agreement, see Encyclopædia of Forms, Vol. XVI., p. 619.

(*k*) The definition of a public elementary school must be collected from various sections of the Education Acts. An elementary school is defined by s. 3 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), as "a school or a department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction from each scholar exceed 9*d.* a week." From this definition evening schools conducted under the regulations of the Board of Education were excluded by s. 22 (1) of the Education Act, 1902 (2 Edw. 7, c. 42). For the application of this definition to a school provided by a school board, see *R.* v. *Cockerton*, [1901] 1 K. B. 322, affirmed, *ibid.*, 726, C. A. Such an elementary school becomes a public elementary school upon being conducted in accordance with the regulations stated in the text, *i.e.*, those in s. 7 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), as amended by subsequent provisions, *e.g.*, s. 7 (4) of the Education Act, 1902 (2 Edw. 7, c. 42). The definition is further affected by the rules relating to fees in public elementary schools (see p. 30, *post*), and by the provisions of s. 22 (2) of the Education Act, 1902 (2 Edw. 7, c. 42), partly defining elementary education. As to elementary education generally, see p. 18, *ante*. As to marine schools, and schools attached to institutions, see Education Act, 1902 (2 Edw. 7, c. 42), s. 15. Such schools (a very small class) may earn a parliamentary grant and be recognised as public elementary schools without being maintained or controlled by a local education authority, or having the managing body required in the case of other public elementary schools.

(*l*) Education Act, 1902 (2 Edw. 7, c. 42), s. 7 (1), and with regard to schools provided by a local education authority, see also Elementary Education Act, 1870 (33 & 34 Vict. c. 75), ss. 14, 18; and Education Act, 1902 (2 Edw. 7, c. 42), s. 5. As to what is implied by the duty to maintain, see, as to "provided" schools, note (*q*) on p. 33, *post*, and as to voluntary schools, note (*l*) on p. 36, *post*.

(*m*) Education Act, 1902 (2 Edw. 7, c. 42), s. 9; and see p. 26, *ante*.

SECT. 5. Elementary Education.

his parent belongs (*n*). The time or times during which any religious observance is practised or instruction in religious subjects is given must be either at the beginning or end or the beginning and end of the meeting of the school at which it is given, and must be inserted in a time table to be approved by the Board of Education, which is to be kept permanently and conspicuously affixed in every schoolroom. Any scholar may be withdrawn by his parent from such observance or instruction without forfeiting any of the other benefits of the school (*o*).

Inspection in secular subjects.

64. The school must be open at all times to the inspection of any of His Majesty's inspectors. It is no part of the duty of those inspectors to inquire into any instruction in religious subjects given at a public elementary school, or to examine any scholar in religious knowledge, or in any religious subject or book (*p*).

Compliance with minutes of Board of Education.

65. The school must be conducted in accordance with the conditions contained in the minutes of the Board of Education and required to be fulfilled by an elementary school in order to obtain an annual parliamentary grant (*q*).

Regulations to be exhibited.

66. A copy of the above-mentioned regulations with reference to the conduct of public elementary schools must be conspicuously put up in every such school (*r*).

Schools must be maintained and controlled by a local education authority.

67. In addition to the conditions of grant in the minutes of the Board of Education, one condition of grant is that the school be maintained and controlled by a local education authority in compliance with the rules governing that maintenance set out in s. 7 of the Education Act, 1902, including, in the case of voluntary schools, the rules relating to the functions of managers under that section (*s*).

Fees and charges in public elementary schools.

68. A local education authority must supply a sufficient amount of public school accommodation without payment of fees (*t*). In addition to being subject to that duty, the power of such an authority to impose fees or other charges in public elementary schools in its area is under other restrictions.

No fees may be charged, except with the consent of the Board of Education, to be given only on specified statutory grounds, to any child between the ages of three and fifteen years in any public

(*n*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 7. (1). Ascension Day is a day exclusively so set apart in the case of the child of a Church of England parent (*Marshall* v. *Graham*, *Bell* v. *Graham*, [1907] 2 K. B. 112).

(*o*) *Ibid.*, s. 7 (2). For an exception as to the time for religious instruction in voluntary schools during voluntary inspection, see p. 38, *post*.

(*p*) *Ibid.*, s. 7 (3). As to His Majesty's inspectors, see note (*l*) on p. 12, *ante*.

(*q*) *Ibid.*, s. 7 (4). As to parliamentary grants and the Board's minutes in respect thereto (commonly called "the Code"), see p. 10, *ante*, and p. 48, *post*. As to maintenance and control by a local education authority as a condition of grant, see *infra*.

(*r*) *Ibid.*, s. 7.

(*s*) Education Act, 1902 (2 Edw. 7, c. 42), s. 7 (4). This provision prevents voluntary schools from what is commonly called "contracting out" of municipal maintenance and control. It has nothing but a formal application to schools provided by a local education authority; marine schools and schools attached to institutions (note (*k*) on p. 29, *ante*) are expressly excepted from it (*ibid.*, s. 15).

(*t*) See p. 25, *ante*.

elementary school receiving the fee grant (*a*) which was a new school subsequently to 1891 (*b*), or in which the average rate of fees charged in the year prior to 1891 (*c*) did not exceed 10*s*., the amount of the fee grant. In any such school in which the rate then charged did exceed that amount the rate to be charged must not, except with the consent of the Board, exceed the amount of the excess. No charge of any kind, whether for fees, books, or other purposes, may be made, except with the consent of the Board, in any public elementary school receiving the fee grant to any child between the specified ages, if the total charge in the year prior to 1891 did not exceed 10*s*. (*d*).

The consent of the Board may only be given if they are satisfied that the duty of the authority as to the provision of sufficient free accommodation has been fulfilled, and that to charge fees or to increase fees beyond the excess (as the case may be) is required by the educational needs of the locality, and the Board may not sanction an ordinary fee exceeding 6*d*. a week. The Board may also make it a condition of their consent that the fees to be received be applied, in whole or in part, in reduction of the fee grant, and may reduce the grant accordingly.

The Board must not, in exercising the above-mentioned powers, discriminate between voluntary schools and schools provided by a local education authority.

The Board must make an annual report to Parliament of their action in sanctioning or refusing the imposition or augmentation of fees under the foregoing rules (*e*).

Medical inspection.

69. A local education authority must provide for the medical inspection of children immediately before, or at the time of, or as soon as possible after, their admission to a public elementary school, and on such other occasions as the Board of Education direct (*f*).

(*a*) For the fee grant, see p. 11, *ante*, and p. 50, *post*.

(*b*) *I.e.*, had not earned an annual parliamentary grant prior to 1st January, 1891; for references, see note (*e*), *infra*.

(*c*) *I.e.*, the school year as defined in the Elementary Education Act, 1891 (54 & 55 Vict. c. 56), s. 10.

(*d*) Elementary Education Act, 1891 (54 & 55 Vict. c. 56), ss. 2, 3, 10.

(*e*) *Ibid.*, ss. 4, 9. In the case of schools not receiving the fee grant the only limits to the fees which may be charged appear to be the duty of the authority to supply sufficient free accommodation (*supra*), and the requirement involved in the statutory definition of an elementary school as a school, *inter alia*, in which the ordinary payments do not exceed 9*d*. per week (see note (*k*), p. 29, *ante*). For the express power of a local education authority to charge fees with the sanction of the Board of Education in public elementary schools provided by them, see Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 17; Elementary Education Act, 1891 (54 & 55 Vict. c. 56), s. 8. As to the power of the local education authority to control fees in voluntary schools, see p. 87, *post*. A parent is under a statutory duty, but not, apart from special circumstances, under a contractual liability, to pay fees lawfully charged in respect of his child in a public elementary school, and such fees cannot be recovered by action; the remedy in case of non-payment is to proceed before justices for penalties under the rules relating to compulsory education, since to send a child to a school where fees are charged without paying them amounts to a failure to cause it to attend school within the meaning of those rules (*London School Board* v. *Wright* (1884), 12 Q. B. D. 578, C. A.; and see note (*p*), p. 59, *post*).

(*f*) Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 13

SECT. 5. Elementary Education.

Medical attendance.

70. A local education authority may make such arrangements as may be sanctioned by the Board for attending to the health and physical condition of children educated in public elementary schools (*g*). Where an authority so provides for the medical treatment of any such child, the parent must be charged with such an amount not exceeding the cost of treatment as the authority may determine. The authority must require the payment of the amount so charged from the parent, unless they are satisfied that the parent is unable to pay it by reason of circumstances other than his own default, and the amount may be recovered summarily as a civil debt. Failure by the parent to pay does not deprive him of any franchise, right or privilege, or subject him to any disability (*h*).

Recreation.

71. A local education authority may provide for children attending public elementary schools, vacation schools and classes, play centres, and other means of recreation, in the schoolhouse or elsewhere in the neighbourhood (*i*).

Power to provide meals.

72. A local education authority may take such steps as they think fit for the provision of meals for children in attendance at any public elementary school in their area in accordance with the following rules (*j*).

School canteen committees.

The authority may associate with themselves any committee, called a school canteen committee, which will undertake to provide food for the children, and will admit one or more representatives of the authority. The authority may aid any such committee by providing the premises, furniture, apparatus, and staff necessary for providing the meals (*k*).

Limits and conditions to rate-aid for meals.

In addition to such aid, the authority may, subject to certain conditions, spend a limited amount out of the rates upon the actual provision of food.

The conditions to be fulfilled are that the authority have passed a resolution that there are children attending their schools who, from lack of food, cannot take full advantage of the education

(1) (b). For the power of a local education authority to direct their medical officer, or his deputy, to examine the person and clothing of children attending public elementary schools, and to require cleansing in case of vermin or foulness, see Children Act, 1908 (8 Edw. 7, c. 67), s. 122; and title INFANTS AND CHILDREN; but, *semble*, except for that purpose a parent is not obliged to submit his child to medical inspection (Local Education Authorities (Medical Treatment) Act, 1909 (9 Edw. 7, c. 13), s. 3).

(*g*) Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 13 (1) (b). In exercising such powers the authority may encourage and assist voluntary agencies, and associate with themselves representatives of such agencies (*ibid.*, s. 13 (1)).

(*h*) Local Education Authorities (Medical Treatment) Act, 1909 (9 Edw. 7, c. 13), ss. 1, 2; a parent, *semble*, cannot be required to submit his child to treatment (see *ibid.*, s. 3); as to the meaning of parent, see *ibid.*, s. 4.

(*i*) Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 13 (1) (a). The provisions as to voluntary agencies (see note (*g*), *supra*) apply to these powers also.

(*j*) Education (Provision of Meals) Act, 1906 (6 Edw. 7, c. 57), s. 1. For the construction of this Act with the other Education Acts, see s. 5 (1), (2), which applies those Acts to expenses, borrowing, the calculation of a rate for the purposes of the Act, and incorporates the definitions of the Acts, but "child" for the purposes of the Act includes any child in attendance at a public elementary school (*ibid.*, s. 5 (2)).

(*k*) *Ibid.*, s. 1.

provided for them; that the authority have ascertained that funds other than public funds are not available, or are not sufficient, to defray the cost of food furnished for the meals; and that the Board of Education consent to the proposed expenditure.

The total amount so expended upon food by the authority must not exceed, in any local financial year, the amount which would be produced by a rate of a halfpenny in the pound over the area of the authority, or, in the case of a county council (other than the London County Council), over the area of the parish or parishes which the council consider to be served by the school (*l*).

Parent's contribution to cost of meals.

The local education authority must charge the parent of every child to whom such a meal is furnished such sum in respect of it as they may determine, and if the parent does not pay that sum the authority must require it to be paid, unless they are satisfied that the parent is unable to pay it on account of circumstances other than his own default. The sum may be recovered summarily as a civil debt (*m*).

The authority must pay over to the school canteen committee such part of any sum received or recovered from a parent as they determine to represent the cost of food furnished by the committee to the child of the parent, less a reasonable deduction in respect of the expenses of recovering the sum (*n*).

Provision of meals not to disqualify.

Neither the provision of a meal to a child nor the failure of a parent to pay a sum required in respect of a meal operates to deprive a parent of any franchise, right, or privilege or to subject him to any disability (*o*).

Saving for teachers.

No teacher seeking employment or employed in a public elementary school may be required as part of his duties to supervise or assist, or to abstain from supervising or assisting, in the provision of meals or the collection of the cost of meals (*p*).

SUB-SECT. 5.—*Rules specially applicable to the Conduct of Schools provided by a Local Education Authority.*

Must be public elementary schools.

73. An elementary school provided by a local education authority must be conducted under the control and management of the authority as a public elementary school (*q*).

(*l*) Education (Provision of Meals) Act, 1906 (6 Edw. 7, c. 57), ss. 1, 3.

(*m*) *Ibid.*, s. 2 (1). For the definition of parent, see Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 3, and note (*d*) on p. 55, *post*.

(*n*) Education (Provision of Meals) Act, 1906 (6 Edw. 7, c. 57), s. 2 (2).

(*o*) *Ibid.*, s. 4.

(*p*) *Ibid.*, s. 6.

(*q*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 14 (1). This provision and the obligation of the local education authority to maintain a public elementary school provided by them (see p. 29, *ante*) involve a duty to keep the schoolhouse of any such school in repair, and the authority are thereby made liable for injuries caused to a child attending the school by the defective condition of the playground (*Ching* v. *Surrey County Council*, [1910] 1 K. B. 736, C. A.); *Cormack* v. *Wick and Pulteneytown School Board* (1889), 16 R. (Ct. of Sess.) 812 (a case on similar words in the Education (Scotland) Act, 1872 (35 & 36 Vict. c. 62); and see *Morris* v. *Carnarvon County Council*, [1910] 1 K. B. 159, where in similar circumstances an authority was held liable for negligence on the common law principle that they invited the user of dangerous premises (the doubts therein expressed whether the duty to maintain refers to the school premises as well as to the institution to be conducted in them are, *semble*, overruled by the decision of the Court of Appeal in *Ching* v. *Surrey County Council*, *supra*).

SECT. 5. **Elementary Education.**

74. No religious catechism or religious formulary which is distinctive of any particular denomination may be taught in any such school (*r*).

Managers.

75. A public elementary school provided by a local education authority which is the council of a county must have a body of managers consisting of a number not exceeding four appointed by that council, together with a number not exceeding two appointed by the minor local authority (*s*).

The minor local authority is the council of any borough or urban district, or the parish council, or, if there be no parish council, the parish meeting of any parish which appears to the county council to be served by the school. Where the school appears to the county council to serve the area of more than one minor local authority, the council must make such provision as they think proper for joint appointment of managers by the authorities concerned (*t*).

A local education authority which is the council of a borough or urban district may, if they think fit, appoint for any public elementary school provided by them a body of managers of such number as they may determine (*u*).

Grouping schools.

A local education authority may also group any such schools under one body of managers constituted as the authority think fit; but if the authority be the council of a county, they must make provision for the due representation of minor local authorities upon the managing body of the grouped schools (*x*).

Increasing managers.

The authority may also, if they think fit, in any particular case increase the total number of managers required by the foregoing rules, but in so doing must preserve the proportion of the numbers of each class (*y*).

Powers of managers.

The managers of a school or schools provided by a local education authority may deal with such matters relating to the management of the school, subject to such conditions and restrictions as the authority may determine, and the proceedings of managers are under the control of the authority (*a*).

SUB-SECT. 6.—*Rules specially applicable to the Maintenance and Conduct of Voluntary Schools.*

Managers of voluntary schools.

76. A voluntary school (*b*) must have a body of managers consisting of a number of foundation managers not exceeding

(*r*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 14 (2), commonly called the Cowper-Temple clause.

(*s*) Education Act, 1902 (2 Edw. 7, c. 42), s. 6 (1).

(*t*) *Ibid.*, s. 24 (2).

(*u*) *Ibid.*, s. 6 (1).

(*x*) *Ibid.*, ss. 6 (3) (a), 12 (3).

(*y*) *Ibid.*, s. 6 (3) (b).

(*a*) *Ibid.*, Sched. I., B. The schedule contains various provisions regulating the proceedings of managers, chiefly applicable to managers of voluntary schools. The managers of a school provided by a local education authority are not an independent statutory body, but are agents of the local education authority, and failure on their part to keep the playground of the school in repair does not absolve the authority from liability for negligence in respect of an accident to a child attending the school caused by the defective condition of the playground (*Ching* v. *Surrey County Council*, [1909] 2 K. B. 762; [1910] 1 K. B. 736, C. A.; and see note (*q*), p. 33, *ante*; and compare *Tozeland* v. *West Ham Union*, [1907] 1 K. B. 920, C. A.

(*b*) For the use of the term "voluntary school," see note (*k*) on p. 25, *ante*.

four, and of a number of representative managers not exceeding two (*c*).

Representative managers.

The representative managers are to be appointed, if the authority be the council of a county, one by that council and one by the minor local authority, or if the authority be the council of a borough or urban district, both by that authority (*d*).

Foundation managers.

The foundation managers are to be managers appointed under the provisions of the trust deed of the school, or under an order made by the Board of Education, or under the trust deed as modified by any such order. Such an order is to be made by the Board if it is shown to their satisfaction that the provisions of the trust deed for the appointment of managers are inconsistent with the statutory requirements as to the conduct of public elementary schools not provided by a local education authority (*e*), or insufficient or inapplicable for the purpose, or that there is no trust deed available (*f*). In making any such order the Board are to have regard to the ownership of the school buildings, and to the principles on which the education given in the school has been conducted in the past (*g*).

Procedure for making order.

The procedure to be followed by the Board in making the order is regulated by statute, and in particular by provisions as to the persons who may apply for an order, the period for application, notice to interested parties of the draft order, and for the making of interim orders (*h*).

Revoking or varying order.

The Board may upon proper application revoke, vary, or amend any such order, but no final order revoking, varying, or amending a previous order may be made until the draft has been laid before both Houses of Parliament. If within thirty days on which Parliament has sat either House resolves that the draft, or any part of it, be not proceeded with, the Board may not proceed with it, but may, if they think fit, make a new draft (*i*).

General duty to maintain and control.

77. A local education authority is responsible for and has the control of secular instruction in voluntary schools (*k*), and is required

(*c*) Education Act, 1902 (2 Edw. 7, c. 42), s. 6 (2).

(*d*) *Ibid.*, and see p. 34, *ante*, for the definition of minor local authority. For the terms of the tenure of office of a representative manager, see *ibid.*, Sched. I., B. (5).

(*e*) See *infra* as to these requirements.

(*f*) *Ibid.*, s. 11 (1). For the definition of trust deed, see *ibid.*, s. 24 (5). The order when made has effect as a trust deed, or part of a trust deed (*ibid.*, s. 11 (2)). For the application of the Act to cases where the receipt of an endowment is dependent upon the qualification of managers, see *ibid.*, s. 11 (7). In *Nott* v. *Williams* (1900), 48 W. R. 316, where under the trust deed the management of a school was in the hands of annual subscribers, it was held that such a body have an inherent right to refuse for good cause to admit new subscribers, *e.g.*, where persons sought to intrude themselves as subscribers not *bonâ fide*, but for the purpose only of appointing a particular person as master of the school.

(*g*) *Ibid.*, s. 11 (4).

(*h*) *Ibid.*, s. 11 (2), (3), (5).

(*i*) *Ibid.*, s. 11 (8).

(*k*) Education Act, 1902 (2 Edw. 7, c. 42), s. 5. For the effect of this provision in relation to the duty to maintain and keep efficient voluntary schools, see observations in *A.-G.* v. *West Riding of Yorkshire County Council*, [1907] A. C. 29. It is to be noted that the power of the Board of Education to

SECT. 5. Elementary Education.

to maintain and keep efficient (*l*) every voluntary school in their area which is necessary (*m*), and to have control of all expenditure required for that purpose, but only so long as the conditions and provisions following are complied with (*n*).

Control of secular instruction and staff.

78. The managers of the school must carry out any directions of the local education authority as to the secular instruction to be given in the school, including any directions with respect to the number and educational qualifications of the teachers to be employed for such instruction, and for the dismissal of any teacher on educational grounds. If the managers fail to carry out any such directions, the authority, in addition to their other powers, are to have the power themselves to carry out the direction in question, as if they were the managers. No such direction may be such as to interfere with reasonable facilities for religious instruction during school hours (*o*). The school is to be open to the inspection

determine questions arising between managers and local education authorities does not extend to questions arising only under s. 5 of the Act.

(*l*) Education Act, 1902 (2 Edw. 7, c. 42), s. 7 (1); and see p. 29, *ante*. The duty to maintain and keep efficient a voluntary school is a duty to maintain the school without differentiation between voluntary and council schools as such (*R.* v. *Board of Education*, [1909] 2 K. B. 1045; affirmed (1910), 26 T. L. R. 422, C. A.), and includes an obligation to pay the reasonable costs of religious instruction given under the control of the managers (*A.-G.* v. *West Riding of Yorkshire County Council*, [1907] A. C. 29) (see *infra* for religious instruction), and to provide teaching for all children lawfully attending the school, it not being within the power of a local education authority to limit maintenance to the education of younger children only (*Wilford* v. *West Riding of Yorkshire County Council*, [1908] 1 K. B. 685). A broad view is to be taken of the duty of the authority, based upon a consideration of the whole scope and tenor of the Act, and upon a comparison of it with the antecedent legislation, and importing the knowledge which the legislature had of the state of things which existed at the time of the Act (*ibid.*, *per* CHANNELL, J., at p. 700). The duty does not itself give rise to any privity of contract between a teacher appointed by the managers (see *infra*) and the authority, or enable such a teacher to sue the authority for salary, though the authority are bound to provide the money to pay the salary (*Crocker* v. *Plymouth Corporation*, [1906] 1 K. B. 494; see also *Young* v. *Cuthbert*, [1906] 1 Ch. 451); but the local education authority may make themselves directly liable to a water company, without any express contract, for water supplied for the use of a voluntary school, and there is under the Act of 1902 no obligation upon the managers to make themselves personally responsible for expenditure required for the maintenance of the school in respect of purposes for which the authority are responsible (*Trowbridge Water Co.* v. *Wilts County Council*, [1909] 1 K. B. 824).

(*m*) As to the necessity of public elementary schools, see pp. 26, 29, *ante*.

(*n*) Education Act, 1902 (2 Edw. 7, c. 42), s. 7 (1). The conditions and provisions following (*i.e.*, those contained in clauses (a)—(e) of sub-s. 1 of s. 7) are not independent affirmative provisions capable of being enforced against the managers by mandamus, but are conditions operating only as between the managers and the authority, the failure to fulfil which by the managers causes the school to cease to be a public elementary school maintainable by the authority (*Young* v. *Cuthbert*, *supra*; and see also *Crocker* v. *Plymouth Corporation*, *supra*).

(*o*) *Ibid.*, s. 7 (1) (a). A direction that secular instruction shall begin at a certain hour and continue for the rest of school hours, though it affects the giving of religious instruction, and prevents children from being taken by the managers to church on Church festivals according to previous custom, is a direction as to secular instruction, but the question whether a local education authority may rightly give such a direction as to secular instruction is outside the jurisdiction of the court, and is to be determined by the Board of Education

of the local education authority (*p*). The consent of the authority is to be required to the appointment of teachers, but that consent may not be withheld except upon educational grounds, and the consent of the authority is to be required to the dismissal of a teacher, unless the dismissal be upon grounds connected with the giving of religious instruction in the school (*q*).

Provision and maintenance of schoolhouse by managers.

79. The managers must provide the schoolhouse free of charge, except for the teacher's dwelling-house (if any), to the local education authority for use as a public elementary school, and must, out of funds provided by them, keep the schoolhouse in good repair and make such alterations and improvements in the buildings as may be reasonably required by the local education authority. Such damage as the authority consider to be due to fair wear and tear in the use of any room in the schoolhouse for the purpose of a public elementary school is to be made good by the authority (*r*).

Authority may use rooms out of school hours.

80. The managers must, if the authority have no suitable accommodation in schools provided by them, allow that authority to use, out of school hours, any room in the schoolhouse free of charge for any educational purpose, but this obligation does not extend to more than three days in the week (*s*).

Damage to rooms or furniture.

81. The managers in respect of the use by them of the school furniture out of school hours, and the local education authority in respect of the use by them of any room in the schoolhouse out of

under s. 7 (3) (*Blencowe* v. *Northamptonshire County Council*, [1907] 1 Ch. 504). A direction to limit secular instruction to children in certain standards, involving the exclusion from the school of children who had attained higher standards, the schoolhouse being capable of accommodating the latter, is not a direction as to secular instruction and is *ultra vires* the local education authority, and the Board of Education have no power, either by giving directions under the Code or by affecting to determine any question under s. 7 (3), to make it *intra vires* (*Wilford* v. *West Riding of Yorkshire County Council*, [1908] 1 K. B. 685; and see note (*l*), p. 36, *ante*). For the Board's power to decide questions under s. 7 (3), see *infra*. As to the powers of managers of a voluntary school to fulfil the conditions of the Act, see p. 39, *post*.

(*p*) Education Act, 1902 (2 Edw. 7, c. 42), s. 7 (1) (b).

(*q*) *Ibid.*, s. 7 (1) (c). The dismissal by the managers of a teacher without the consent of the authority operates, in the absence of special circumstances, as between them and the authority only, so as to disentitle the school from further maintenance by the authority, and the fact that the consent has not been given does not by itself give the teacher a right to sue the managers for wrongful dismissal (*Young* v. *Cuthbert*, [1906] 1 Ch. 451; and see note (*n*), p. 36, *supra*; see also s. 7 (7) of the Act, p. 38, *post*).

(*r*) *Ibid.*, s. 7 (1) (d). "Schoolhouse" includes the teacher's dwelling-house and playground (if any) and the offices and all premises belonging to or required for a school (Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 3). The managers of a voluntary school have not, by virtue of the Education Act, 1902 (2 Edw. 7, c. 42), such a possession of the schoolhouse as would entitle them, in the absence of special arrangements with the trustees or owner, to maintain an action for trespass in respect of it (*Blencowe* v. *Northamptonshire County Council*, [1907] 1 Ch. 504; and as to the powers of managers of a voluntary school, see p. 39, *post*). The local education authority are entitled to the use of school furniture and apparatus belonging to the trustees or managers used for the purposes of the school before the Education Act, 1902 (2 Edw. 7, c. 42), came into operation; see Sched. II. (14) of the latter Act. For the exemption of the premises of a voluntary school (other than the teacher's dwelling-house) from rates, see title RATES AND RATING.

(*s*) Education Act, 1902 (2 Edw. 7 c. 42), s. 7 (1) (e).

SECT. 5. Elementary Education.

school hours, are to be liable to make good any damage caused to the furniture or the room by reason of that use other than damage arising from fair wear and tear, and the managers must take care that, after the use of a room in the schoolhouse by them, the room is left in a proper condition for school purposes (*t*).

Appointment and dismissal of teachers.

82. The managers, subject to the powers of control given to the local education authority under the foregoing rules and to the rule following in respect of pupil teachers, are to have the exclusive power of appointing and dismissing teachers (*u*).

Assistant teachers and pupil teachers may be appointed, if thought fit, without reference to religious creed or denomination. In any case in which there are more candidates for the post of pupil teacher than there are places to be filled, the appointment is to be made by the authority, and the authority is to determine the respective qualifications of the candidates by examination or otherwise (*x*).

Religious instruction.

83. Religious instruction in a voluntary school must, as regards its character, be in accordance with the provision (if any) of the trust deed relating thereto, and must be under the control of the managers (*a*).

Rules are conditions of grant.

84. Compliance with the foregoing rules relating to the maintenance and conduct of a voluntary school is expressly made in the case of any such school a condition of earning a parliamentary grant (*b*).

Board of Education to determine differences.

85. Any question arising under the foregoing rules between the managers of a voluntary school and the local education authority is to be determined by the Board of Education (*c*).

Voluntary inspection.

86. The managers of a voluntary school may have their school inspected and the scholars examined by an inspector, not being one of His Majesty's inspectors, on days, not exceeding two in the year, fixed by themselves. Fourteen days before any such inspection the managers must give public notice in the school of the day fixed, and also put up a notice of it in writing. On any such day any

(*t*) Education Act, 1902 (2 Edw. 7, c. 42), s. 7 (2).

(*u*) *Ibid.*, s. 7 (7); and see note (*l*), p. 36, and note (*q*), p. 37, *ante*.

(*x*) *Ibid.*, s. 7 (5). For the power of managers to comply with this and other provisions inconsistent with the trusts of a school, see p. 39, *post*.

(*a*) *Ibid.*, s. 7 (6); and see preceding note. The rule does not affect any provision in a trust deed for reference to the bishop or ecclesiastical superior, or other denominational authority, of any question as to whether the religious instruction complies with the trust deed (*ibid.*, s. 7 (6)). For the duty of the local education authority to allow reasonable facilities for religious instruction, see p. 36, *ante*.

(*b*) See note (*s*), p. 30, *ante*, and remarks in *R.* v. *West Riding of Yorkshire County Council*, [1906] 2 K. B. 676, 687, 702, C. A. This provision does not apply to the rules in s. 5 of the Education Act, 1902 (2 Edw. 7, c. 42), but only to those in s. 7.

(*c*) *I.e.*, any question arising under s. 7 of the Education Act, 1902 (2 Edw. 7, c. 42), *ibid.*, s. 7 (3). As to the effect of this provision, see note (*o*) on p. 36, *ante*, and remarks in *A.-G.* v. *West Riding of Yorkshire County Council*, [1907] A. C. 29. The duty to determine is a judicial one, and the Board must act judicially and upon evidence properly before them and according to law (*R.* v. *Board of Education, Ex parte Oxford Street School, Swansea (Managers)* (1910), 26 T. L. R. 422, C. A.; and see *Wilford* v. *West Riding of Yorkshire County Council*, [1908] 1 K. B. 685, *per* CHANNELL, J., at p. 700).

religious observance may be practised, and any instruction in religious subjects given, at any time during the meeting of the school, but any scholar who has been withdrawn by his parent from any religious observance or instruction in religious subjects may not be required to attend the school on that day (*d*).

Fees in voluntary schools.

87. The local education authority have power to determine whether fees shall or shall not be charged in a voluntary school, subject to the rules relating to the imposition of fees in public elementary schools (*e*). Where fees were charged in a voluntary school prior to the 18th December, 1902, the authority must, so long as they allow fees to be charged in that school, pay to the managers such proportion of the fees as may be agreed upon, or, in default of agreement, determined by the Board of Education (*e*).

Grouping.

88. The local education authority have, in respect of voluntary schools, powers as to increasing the number of managers, and as to grouping schools under one body of managers, similar to those which they have in the case of public elementary schools provided by them, but the power of grouping voluntary schools can only be exercised with the consent of the managers of the schools, and by agreement with them as to the constitution of the managing body, or, in default of agreement, according to the decision of the Board of Education (*f*).

Powers of managers.

89. The managers of a voluntary school constituted as above stated are the managers for the purposes of the Education Act, 1902, and the Elementary Education Acts, 1870 to 1900, and, so far as respects the management of the school as a public elementary school, for the purposes of the trust deed (*g*), and they have, notwithstanding any provision contained in the trust deed, all the powers necessary to enable them to fulfil the conditions upon which parliamentary grants are obtained, and to comply with all the statutory regulations and conditions in accordance with which voluntary schools must be conducted (*h*).

(*d*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 76. See p. 29, *ante*, for the general rule as to the time of religious instruction and the withdrawal of children.

(*e*) Education Act, 1902 (2 Edw. 7, c. 42), s. 14; the section implies that the power of a local education authority to control and give directions to the managers respecting secular instruction, and to control expenditure, includes the power to determine whether fees shall be charged. For rules as to fees in public elementary schools in general, see p. 30, *ante*.

(*f*) *Ibid.*, ss. 6 (3), 12; and see p. 34, *ante*.

(*g*) *Ibid.*, s. 11 (6).

(*h*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 99; Education Act, 1902 (2 Edw. 7, c. 42), s. 7 (7) and Sched. III. (7). As to the managers' rights respecting the provision of the schoolhouse, see note (*r*) on p. 37, *ante*. Various rules as to the formal proceedings of managers are contained in Sched. I., B of the Education Act, 1902 (2 Edw. 7, c. 42). As to the conditions of grant, and the statutory regulations to be complied with, see pp. 29, 34, *ante*. As to the liability of managers to a pupil or other person for negligence in the conduct of the school, see *Crisp* v. *Thomas* (1890), 63 L. T. 756, C. A., where in an action with reference to a voluntary school prior to the Education Act, 1902 (2 Edw. 7, c. 42), it was held, upon the provisions in the trust deed as regards management, that the vicar of the parish could not be made liable for the negligence of a teacher, either as *ex officio* trustee or as manager, as in neither capacity had he real control over the school, and *Baxter* v. *Thomas*, *Times* (1903), 13th April

SECT. 5. **Elementary Education.**

Acquisition of land by managers.

90. The provisions of the Lands Clauses Acts, other than those relating to compulsory powers, are applicable to the purchase of land by managers for a schoolhouse for a voluntary school, and land may be so acquired either under those Acts or under the School Sites Acts (*i*).

Endowment of voluntary schools.

91. The statutory rules for the conduct and management of voluntary schools do not, except as expressly provided, affect any endowment of such a school, or the discretion of the trustees in respect of an endowment. But where, under the trusts or other provisions affecting the endowment, the income must be applied, in whole or in part, for those purposes of a public elementary school for which provision is to be made by the local education authority, the whole of the income, or a part, as the case may be, must be paid to the authority. If only part of the income must be so applied, and there is no provision under the trusts or provisions for determining the amount which represents that part, the amount, in case of difference between the parties concerned, is to be determined by the Board of Education. The authority may require the Board, before giving their decision, to hold a public inquiry at the cost of the authority (*k*).

SECT. 6.—*Blind, Deaf, Defective, and Epileptic Children.*

SUB-SECT. 1.—*In General.*

Special provision for special children.

92. The functions of a local education authority with reference to the provision and maintenance of elementary school accommodation for their area are subject, in the case of blind, deaf, defective, or epileptic children, to various modifications under statutes specially relating to such children (*a*).

(C. A., *Times*, 13th November, 1903), where KENNEDY, J., dismissed a similar action against the manager of a school, apparently not a public elementary school, and questioned whether the unpaid managing body of such a school could be made liable for an act of negligence on the part of one of the assistant teachers, who was otherwise a competent teacher; see also note (*a*), p. 34, *ante*, as regards the case of a school provided by a local education authority. For the duties arising under contract to educate, in general, see p. 122, *post*.

(*i*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 21; see *ibid.* as to the form of conveyance where the Lands Clauses Acts are made use of. Any persons desirous of establishing a public elementary school are to be deemed managers for the purpose of this rule, if they obtain the approval of the Board of Education to its establishment (*ibid.*, s. 21; and see p. 25, *ante*, as to provision of new schools). For the Lands Clauses Acts in general, see title COMPULSORY PURCHASE OF LAND ETC., Vol. VI., p. 1; as to the School Sites Acts, see p. 117, *post*.

(*k*) Education Act, 1902 (2 Edw. 7, c. 42), s. 13; ten days' notice must be given of the inquiry to the local education authority, the minor local authority, and the trustees. For the application by a county council of the part of any endowment so payable to it, see p. 48, *post*.

(*a*) The Acts are the Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), and the Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32). For special rules under the Acts relating to parents' duties in respect of contributions to expenses, see p. 44, *post*, and in respect of compulsory education, see pp. 55, 56, 60, *post*. For special rules relating to religious instruction, see p. 43, *post*. Schools for such children, it will be seen, may be provided voluntarily or by local education authorities, and in neither case need be public elementary schools. The school authorities for the purposes of the Acts were school boards, and, in places where there were

SECT. 6.
Blind, Deaf, Defective, and Epileptic Children.

"Blind," in this connection, means too blind to be able to read the ordinary school books used by children, and "deaf" means too deaf to be taught in a class of hearing children in an elementary school (*b*).

A defective child is one who, not being imbecile, and not being merely dull or backward, is incapable by reason of mental or physical defect of receiving proper benefit from the instruction in the ordinary public elementary schools, but is not incapable by reason of defect of receiving benefit from instruction in such special classes or schools as the Act in question authorises; and an epileptic child is one who, not being an idiot or imbecile, is unfit by reason of severe epilepsy to attend the ordinary public elementary schools (*c*). In every such case a child is, for the purposes of the Education Acts, a child till the age of sixteen years (*d*).

Definitions of "blind," "deaf," "defective" and "epileptic" children.

SUB-SECT. 2.—*Blind and Deaf Children.*

93. It is the duty of every local education authority to enable blind and deaf children who are resident in their area (*e*), and for whose elementary education efficient and suitable provision is not otherwise made, to obtain that education in some school for the time being certified by the Board of Education (*f*) as suitable for providing that education. For that purpose the authority must either establish, or acquire, and maintain a school so certified, or must contribute, on such terms and to such extent as may be approved by the Board, towards the establishment or enlargement, alteration and maintenance, of a school so certified, or towards any of these purposes, and, where necessary or expedient, must make arrangements, subject to regulations of the Board, for boarding out any blind or deaf child in a home conveniently near to the certified school where the child is receiving elementary education (*g*).

Duty to provide for blind and deaf children.

no school boards, district councils; see s. 4 of the former Act, and s. 1 (1) of the latter. For the substitution of local education authorities, see Education Act, 1902 (2 Edw. 7, c. 42), ss. 5, 25; and Sched. II. (1), (7), and Sched. IV. For the general powers and duties of a local education authority respecting the provision of school accommodation, see p. 24, *ante*. For special definitions ("school" as including places for lodging etc. children; "elementary education" as including industrial training; "maintenance" as including clothing; "expenses" as including certain expenses of an incidental character and expenses of conveyance to school) and for construction of Acts, see Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 15; Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 14.

(*b*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 15 (1).

(*c*) Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 1 (1).

(*d*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 11; Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 11.

(*e*) By s. 18 (2) of the Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), a blind or deaf child resident in a school, or boarded out in pursuance of the Act, is deemed for the purposes of the Act to be resident in the area from which it is sent.

(*f*) See p. 44, *post*, as to certificates.

(*g*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict c. 42), s. 2 (1). The powers of a local education authority to provide land and buildings for public elementary schools and in respect of expenses are applicable in the case of schools for blind and deaf children; see *ibid.*, s. 5; Education

SECT. 6. SUB-SECT. 3.—*Defective and Epileptic Children.*

Blind, Deaf, Defective, and Epileptic Children.

94. A local education authority may, with the approval of the Board of Education, make such arrangements as they think fit for ascertaining what children in their area are defective children, and what children in their area are epileptic children (*h*). For the purpose of ascertaining whether a child is defective or epileptic, a certificate, in such form as may be prescribed by the Board, by a duly qualified medical man is required in each case (*i*).

Method of ascertaining who are defective or epileptic.

It is the duty of the parent of any child, who may be required by the local education authority to be so examined, to cause the child to attend the examination, and any parent who fails to comply with such requirement is liable on summary conviction to a fine not exceeding £5, and a parent, if not so required, may himself call upon the authority to provide in the course of such an examination facilities to enable his child to be examined (*k*).

Parent's powers and duties as to examination.

Provision of education for (1) defective,

95. Where a local education authority have ascertained that there are in their area defective children, they may provide for the education of these children by all or any of the following means:—(1) by classes in public elementary schools certified by the Board of Education as special classes for defective children; or (2) by establishing schools certified by the Board for defective children; or (3) by boarding out, subject to the regulations of the Board, any such child in a house conveniently near to a certified special class or school.

(2) epileptic children.

Where a local education authority have ascertained that there are in their area epileptic children, they may make provision for their education by establishing schools, certified by the Board, for epileptic children (*l*).

Periodical examination.

96. A local education authority must from time to time ascertain by examination whether any defective or epileptic child for whose education they have made provision is fit to attend ordinary classes in public elementary schools, and must, if required by its

Act, 1902 (2 Edw. 7, c. 42), Sched. III. (8), and p. 26, *ante*. For the rules applicable in the case of contributions by one local education authority to the expenditure of a capital nature of another with reference to security for repayment, see Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 2 (3), and for the power to arrange for an authority to be represented on the governing body of a school to which it contributes, see *ibid.*, s. 3. For the exception from the duty of the local education authority of children who are idiots or imbeciles, or in the care of poor law authorities, see *ibid.*, s. 2 (2), and p. 83, *post*, and title POOR LAW.

(*h*) Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 1 (1); for the definitions of "defective" and "epileptic," see p. 41, *ante*.

(*i*) *Ibid.*, s. 1 (3). Such a certificate is *primâ facie* evidence that the child is defective or epileptic in legal proceedings by the authority (Education (Administrative Provisions) Act, 1909 (9 Edw. 7, c. 29), s. 6).

(*k*) Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 1 (2), (4).

(*l*) *Ibid.*, s. 2 (1), (2); and see p. 44, *post*, as to certificates of the Board of Education. For a provision saving a local education authority from being affected with any duty in respect of children having their residence or permanent home in the area of another authority, or children in the care of poor law authorities, in the absence of contributions from such authorities, see *ibid.*, s. 10; for the power to make such contributions, see pp. 43, 82, *post*.

parent, in particular examine for that purpose any such child who has not been examined for six months (*m*).

SECT. 6. Blind, Deaf, Defective, and Epileptic Children.

97. The power of a local education authority to provide for the education of defective or epileptic children includes the power to establish or acquire, and to maintain, certified schools for such children, and to contribute on such terms and to such extent as may be approved by the Board of Education towards the establishment, enlargement, or alteration, and towards the maintenance of such schools (*n*).

Power to acquire and contribute to schools.

98. A local education authority may in respect of children resident in (*o*), or whose permanent home is in, their area and attending certified special classes or schools situated in the area of another local education authority, contribute to that other authority the proportionate cost of the provision and maintenance of those special classes or schools (*a*).

Power to contribute to other authority.

SUB-SECT. 4.—*Religious Instruction.*

99. The religious instruction in certified schools for blind, deaf, defective, or epileptic children, if and in so far as any such school is not a public elementary school (*b*), must be conducted in accordance with the rules applying to industrial schools (*c*), except that references in those rules to the Secretary of State are to be construed as references to the Board of Education; and any local education authority may provide and maintain a school so conducted for the education of blind, deaf, defective, and epileptic children (*d*).

Rules of industrial schools apply unless school is public elementary school.

In selecting a school for a blind, deaf, defective, or epileptic child, the local education authority must be guided by the rules relating to religion laid down with reference to the selection of industrial schools (*e*), and if such a child is boarded out, the local education authority must, if possible, arrange for the boarding out being with a person belonging to the religious persuasion of the child's parent (*f*).

Selection of schools.

When a blind, deaf, defective, or epileptic child is required to attend any school, the child must not be compelled to receive religious instruction contrary to the wishes of the parent, and must,

Parent's wishes to be respected.

(*m*) Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 2 (5).

(*n*) *Ibid.*, s. 2 (3); and see p. 44, *post*, as to certificates of the Board of Education. The powers with respect to the provision of land and buildings, and with respect to expenses, are the same as in the case of blind and deaf children (*ibid.*, s. 6; and see note (*g*), p. 41, *ante*).

(*o*) The definition of "resident in" respecting a blind or deaf child applies here (*ibid.*, s. 14; and see note (*e*), p. 41, *ante*).

(*a*) *Ibid.*, s. 2 (4). As to contributions by boards of guardians, see p. 82, *post*.

(*b*) See pp. 29 *et seq.*, *ante*, for the rules applicable in the case of public elementary schools.

(*c*) See p. 70, *post*, as to religious instruction in industrial schools; the general principle is that a child is to be brought up in the faith of the religious persuasion to which it belongs.

(*d*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 8; Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 12; Children Act, 1908 (8 Edw. 7, c. 67), s. 134 (3) (this Act repeals and replaces the Industrial Schools Act, 1866 (29 & 30 Vict. c. 118); see note (*c*), p. 71, *post*.

(*e*) See p. 72, *post*; and Children Act, 1908 (8 Edw. 7, c. 67), s. 66.

(*f*) See note (*d*), *supra*

SECT. 6. **Blind, Deaf, Defective, and Epileptic Children.**

so far as practicable, have facilities for receiving religious instruction and attending religious services conducted in accordance with the parent's persuasion, which must be duly registered on the child's admission to the school (*g*).

SUB-SECT. 5.—*Liability of Parent to Contribute to Expenses.*

Duty of parent to contribute.

100. The parent of any blind, deaf, defective, or epileptic child, in respect of whom any expense has been incurred by a local education authority, must contribute towards the expenses of the child such weekly sum, if any, as, regard being had to the statutory duty of the local education authority to provide a sufficient amount of school accommodation without payment of fees (*h*), may be agreed upon between the local education authority and the parent, or, if the parties fail to agree, as may, on the application of either party, be settled by a court of summary jurisdiction. Any sum so agreed on or settled may, without prejudice to any other remedy, be recovered by the local education authority summarily as a civil debt. It is the duty of the authority to enforce any such order, and any sum so received by a local education authority may be applied by them in aid of their general expenses. A court which is competent to make such an order may at any time revoke or vary any order so made (*i*).

Parent not to be disqualified.

A parent is not by reason of any payment of such expenses deprived of any franchise, right, or privilege, nor is he subject to any disability or disqualification (*k*).

Choice of school to be free.

Payments in respect of a blind, deaf, defective, or epileptic child must not be made on condition of the child attending any certified school other than such as may be reasonably selected by the parent, nor be refused because the child attends, or does not attend, any particular school so certified (*l*).

SUB-SECT. 6.—*Certificates and Duties of Board of Education.*

Condition of certificates.

101. A school may not be certified by the Board of Education as suitable for providing elementary education for blind or deaf children, or as a school for defective or epileptic children—(1) if it is conducted for private profit; nor (2) unless it is either managed by a local education authority, or the annual expenses of its maintenance are audited and published in accordance with regulations of the Board; nor (3) unless it is open at all times to the inspection of His Majesty's inspectors of schools (*m*), and of any visitors authorised by any local education authority sending children to the school; nor (4) unless the above stated rules relating to such children respectively are complied with in the case

(*g*) See note (*d*), p. 43, *ante*.
(*h*) See p. 30, *ante*.
(*i*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 9; Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 8 (1).
(*k*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 10 (1); Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 8 (2).
(*l*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 10 (2); Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 8 (3).
(*m*) See p. 12, *ante*.

SECT. 6. Blind, Deaf, Defective, and Epileptic Children.

of the school. The certificate granted by the Board is an annual one (*n*).

The Board may not, except upon prescribed conditions, certify any new establishment for boarding or lodging more than fifteen defective or epileptic children in one building, or comprising more than four such buildings (*o*).

Schools to count for school attendance.

102. Every school so certified by the Board is a certified efficient school (*p*), and for the purposes of the rules relating to school attendance orders (*q*) may be treated as if it were a public elementary school (*r*).

Report of Board of Education.

103. The Board must in their annual report to Parliament (*s*) give lists of the schools and classes to which they have granted or refused certificates (*t*).

Power to pay parliamentary grants.

104. Nothing in any Act of Parliament shall prevent the Board from giving aid from the parliamentary grant in respect of education given to blind, deaf, defective, or epileptic children to such amount, and on such conditions, as may be directed by, or in pursuance of, the minutes of the Board in force for the time being (*a*).

SECT. 7.—*Combined Action by Councils.*

Joint education committees.

105. A scheme for an education committee may provide for a joint education committee for any area formed by a combination of counties, boroughs, urban districts, or parts of such areas (*b*), and may make provision for the proportions in which any expenditure on matters referred or delegated to the joint committee is to be borne as between the councils of the areas for which the joint committee is constituted (*c*). It must provide that a majority of the members of the joint committee shall be appointed by those councils (*d*).

(*n*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 7; Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 5.

(*o*) Elementary Education (Defective and Epileptic Children) Act, 1899, (62 & 63 Vict. c. 32), s. 2 (6); Elementary Education Amendment Act, 1903 (3 Edw. 7, c. 13), s. 1; the conditions prescribed for larger establishments include the laying of rules before Parliament.

(*p*) For definition of certified efficient school, see note (*v*), p. 57, *post*.

(*q*) See p. 57, *post*.

(*r*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 7(2); Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 5.

(*s*) See p. 14, *ante*.

(*t*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 14; Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 13.

(*a*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 12; Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 7; see pp. 10, 30, *ante*.

(*b*) Education Act, 1902 (2 Edw. 7, c. 42), s. 17 (5); and see as to education committees, p. 19, *ante*.

(*c*) Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 7.

(*d*) Education Act, 1902 (2 Edw. 7, c. 42), s. 17 (5).

SECT. 7. Combined Action by Councils.

Delegating management.

106. A local education authority, or a council having concurrent powers only in respect of higher education (*e*), may make arrangements with the council of any county, borough, district, or parish, whether a local education authority or not, for the exercise by the latter council, on such terms and subject to such conditions as may be agreed upon, of any of the powers of that authority or council in respect of the management of any school or college within the area of the council (*f*).

Joint maintenance of elementary schools.

107. Local education authorities may, with the sanction of the Board of Education, combine together for any purpose relating to elementary schools in their areas, and, in particular, for the purpose of providing, maintaining, and keeping efficient schools common to their areas. The agreement may provide for the joint appointment of managers, for the proportion of contributions towards expenses, and for such other matters as the Board think necessary to carry out the agreement. The expenses of any joint body of managers are to be paid by the authorities in the proportions specified in the agreement (*g*).

Contributions by county councils to councils with "concurrent" powers.

108. The council of a county may, by agreement, contribute towards capital expenditure incurred for the purposes of higher education by the council of a borough or district in their area having concurrent powers only in respect of higher education, according to the terms and conditions of the agreement (*h*); and any local education authority, or other council, having powers in respect of higher education may unite with any other such authority or council for the purpose of establishing or maintaining any school or college within those powers, on such terms as to payment, appointment of a joint body of managers, and otherwise, as may be agreed upon between them (*i*).

Joint officers.

109. Separate local education authorities may make arrangements for the appointment of the same person to be an officer of each authority (*k*).

Conferences.

110. A local education authority may hold conferences with other local education authorities for the purpose of discussing any matter connected with the duties devolving upon them, and may, subject to regulations made by the Board of Education and certain further restrictions, pay as part of their expenses the expenses of their officers and members attending such conferences, and subscriptions towards the expenses of such conferences (*l*).

(*e*) See p. 23, *ante*.

(*f*) Education Act, 1902 (2 Edw. 7, c. 42), s. 20 (a).

(*g*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 52; Education Act, 1902 (2 Edw. 7, c. 42), s. 25, and Sched. IV.

(*h*) Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 4 (1) the section is retrospective; as to the contributions being made security for loans, see note (*l*) on p. 51, *post*.

(*i*) Education (Administrative Provisions) Act, 1909 (9 Edw. 7, c. 29), s. 3 this and the last provision, both retrospective, considerably overlap.

(*k*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 35.

(*l*) School Board Conference Act, 1897 (60 & 61 Vict. c. 32).

SECT. 8.—*Finance and Audit (m).*

SECT. 8. **Finance and Audit.**

SUB-SECT. 1.—*In General.*

Income and receipts generally.

111. The funds at the disposal of local education authorities consist of the rates, grants made by central authorities out of moneys provided by Parliament, loans, and miscellaneous receipts. All receipts in respect of any school maintained by a local education authority, including any parliamentary grant, but excluding sums specially applicable for purposes for which provision is to be made by the managers, must be paid to the authority (*n*). The education accounts of local education authorities are audited by auditors appointed by the Local Government Board (*o*).

Funds for payment.

112. The expenses of a local education authority, so far as not otherwise provided by the other receipts of the authority, and subject to the provisions of any local Act, are payable, in the case of the council of a county, out of the county fund, in the case of the council of a borough out of the borough fund or rate, or, where no borough rate is levied, out of a separate rate made, assessed, and levied, in the same manner as the borough rate, and in the case of the council of an urban district out of a fund to be raised out of the poor rate of the parish or parishes comprised in the district, according to the rateable value of each parish (*p*).

SUB-SECT. 2.—*Provisions specially applicable to County Councils.*

Distribution of burdens within county area.

113. No rate may be raised by a county council on account of expenses incurred by them for the purpose of elementary education within any borough or urban district the council of which is a local education authority for that purpose (*q*). Expenses incurred by a county council for the purposes of higher education may be charged (subject to reasonable notice to the overseers) upon the parish or parishes which the authority think are served by the school or college in connection with which the expenses are incurred (*r*). A

(*m*) The provisions stated in this section are, with the necessary modifications, applicable also to councils having only concurrent powers in respect of higher education (see note (*b*), p. 21, *ante*).

(*n*) Education Act, 1902 (2 Edw. 7, c. 42), s. 18 (2); and see as to managers' purposes under the Act, p. 37, *ante*. For the disposal of grants accrued due before the Act came into operation, see *ibid.*, Sched. II. (12). For parliamentary grants generally, see p. 10, *ante*, and p. 49, *post*. For audit of the accounts of local authorities, see, generally, title LOCAL GOVERNMENT.

(*o*) See p. 14, *ante*, and p. 52, *post*.

(*p*) Education Act, 1902 (2 Edw. 7, c. 42), s. 18 (1); Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 33 (proviso). An urban district council has the powers of guardians for enforcing the contributions of parishes (Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 33). As to cases governed by local Acts, see Education Act, 1902 (2 Edw. 7, c. 42), s. 18 (4). As to rates, see, generally, title RATES AND RATING. The other receipts of a local education authority are payable into the county or borough fund.

(*q*) Education Act, 1902 (2 Edw. 7, c. 42), s. 18 (1) (b). As to what are the boroughs and districts involved, see p. 17, *ante*.

(*r*) *Ibid.*, s. 18 (1) (a). For a limit of the total amount to be raised out of the rates by a county council for the purposes of higher education, see p. 23, *ante*.

SECT. 8. Finance and Audit.

county council must charge such portion as they think fit, not being less than one-half or more than three-fourths of any expenses incurred by them, in respect of capital expenditure or rent, on account of the provision or improvement of any public elementary school on the parish or parishes which the council think are served by the school (*s*). A portion, similarly fixed, of any expenses incurred to meet liabilities on account of loans or rent of any school board transferred to a county council must be raised exclusively within the area (so far as it is within the area of the county council) in respect of which the liability was incurred (*t*).

Certain endowments to go in relief of rates.

Any money arising from the endowment of a voluntary school which is paid to a county council (*a*) must be credited by the council in aid of the rate levied for the purposes of elementary education in the parish or parishes which the council think are served by the school, or, at the option of the council, must be paid to the overseers of the parish or parishes in proportions ordered by the council, and must be applied by the overseers in aid of the poor rate levied in such parish or parishes (*b*).

SUB-SECT. 3.—*Grants from Central Authorities.*

Grants.

114. A large part of the revenue of local education authorities consists of grants made by central authorities out of moneys provided by Parliament (*c*).

In aid of higher education.

Grants in aid of higher education (*d*) include (1) grants made by the Board of Education in aid of training colleges, pupil teacher centres, secondary schools, technical schools, evening schools, various classes and scholarships (*e*); (2) grants made by the Treasury to local education authorities having powers to aid out of the rates Welsh intermediate schools (*f*); (3) grants paid out of the Consolidated Fund representing the proceeds of the residue of the

(*s*) Education Act, 1902 (2 Edw. 7, c. 42), s. 18 (1) (c). "Expenses in respect of capital expenditure" refers to the objects of the expenditure (*e.g.*, works of a permanent character), and not the means of raising the money, and a special charge on the parishes must be made for such objects notwithstanding that the expenditure is met out of revenue and not by means of a loan (*R.* v. *Wraith, Ex parte Kent County Council*, [1907] 2 K. B. 756), but no question may be raised on audit as to whether expenses incurred for particular purposes are properly treated under the sub-section, if they have been treated in accordance with any order of the Local Government Board declaring whether particular purposes are or are not to be treated as capital expenditure (Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 5).

(*t*) Education Act, 1902 (2 Edw. 7, c. 42), s. 18 (1) (d). As to transfer of school board liabilities, see note (*g*), p. 25, *ante*.

(*a*) See p. 40, *ante*.

(*b*) Education Act, 1902 (2 Edw. 7, c. 42), s. 13 (2).

(*c*) In addition to the grants mentioned, sums, representing grants under the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16) to supply the deficiency in the produce of rates paid in respect of agricultural land, are payable to local education authorities as spending authorities under that Act; see Finance Act, 1907 (7 Edw. 7, c. 13), s. 17, and title LOCAL GOVERNMENT.

(*d*) See p. 22, *ante*, as to higher education.

(*e*) See p. 10, *ante*, as to the powers of the Board of Education respecting these grants.

(*f*) Welsh Intermediate Education Act, 1889 (52 & 53 Vict. c. 40), s. 9; see p. 111, *post*, as to Welsh intermediate schools and Treasury contributions.

SECT. 8. Finance and Audit.

local taxation (customs and excise) duties, commonly called "whisky money," and applicable to such extent as the local education authority think fit in any year for the purpose of higher education (*g*).

In aid of elementary education generally.

Grants payable to local education authorities in aid of elementary education are (1) the grants, called parliamentary grants, made by the Board of Education in aid of public elementary schools in accordance with statutory requirements, and in aid of schools for blind, deaf, and defective or epileptic children (*h*); (2) grants made by the Home Secretary in aid of industrial schools (*a*).

Parliamentary grants.

The parliamentary grants in aid of public elementary schools are:—

Code grant.

(1) An annual grant paid in accordance with the Code to a local education authority in respect of each public elementary school in their area (*b*).

Small population grants.

(2) A special annual grant (commonly called a small population grant) made in respect of any public elementary school situate and being the only such school in sparsely populated regions, varying from £10 to £25 per school, according to the limit of population,

(*g*) Education Act, 1902 (2 Edw. 7, c. 42), s. 2 (1); Local Taxation (Customs and Excise) Act, 1890 (53 & 54 Vict. c. 60), s. 1; Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), s. 7; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 23; Finance Act, 1907 (7 Edw. 7, c. 13), s. 17; and see titles LOCAL GOVERNMENT; REVENUE. The whole of the sums representing the residue of the duties is now, under the first-named Act, bound to be applied to higher education, unexpended balances being carried forward to the next year. In the case of a Welsh council, the "whisky money" is applicable for the purposes of intermediate education (Local Taxation (Customs and Excise) Act, 1890 (53 & 54 Vict. c. 60), s. 1 (4)).

(*h*) See definition of "parliamentary grant" in the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 3; and references on pp. 10, 11, *ante*. The title "For Public Education in Great Britain" ceased to appear in the Appropriation Act, 1899 (62 & 63 Vict. c. 49), and a longer title was then substituted in terms varying from year to year, but beginning in the form common to other Civil Service supplies, "For the Salaries and Expenses of the Board of Education"; if the term "parliamentary grant" is to include what the words are usually taken to mean, the definition in s. 3 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), must, *semble*, be construed as now referring to moneys provided by Parliament so intituled; for a use of the term "parliamentary grant" in a statute subsequent to 1899, see Education Act, 1902 (2 Edw. 7, c. 42), s. 7 (4). Ordinarily the term "parliamentary grant" in the Education Acts would appear only to refer to grants made in aid of education at public elementary schools, but the terms of s. 12 of the Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), and of s. 7 of the Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), appear to indicate that grants in aid of schools under those Acts are "parliamentary grants" within the meaning of the Education Acts, and to be reckoned for the purposes of any deduction under s. 10 of the Education Act, 1902 (2 Edw. 7 c. 42). The effect of those sections of the former Acts respectively is to enable the Board of Education to make grants in aid of schools under those Acts for blind, deaf, defective, or epileptic children, in spite of the non-fulfilment of the statutory conditions for the payment of a parliamentary grant in case of public elementary schools. For grants, apparently of a temporary nature, in aid of building schools, see note (*b*), p. 11, *ante*, and for similar grants to necessitous areas, see p. 50, *post*.

(*a*) See p. 77, *post*.

(*b*) This grant is paid under the Code, and in accordance with the statutory conditions of grant, but its payment is not expressly directed or permitted by statute, except so far as the annual Appropriation Act does so.

SECT. 8. Finance and Audit.

and payable according to special conditions in the Code as to efficiency (*c*).

Fee grant.

(3) A grant (commonly called a fee grant) made at the rate of 10*s.* a scholar and calculated upon the average attendance of children over three and under fifteen at each public elementary school in respect of which the authority fulfil the statutory conditions as to the imposition of fees and accept the grant (*d*).

Grant under Education Act, 1902.

(4) A grant (commonly called the aid grant under s. 10 of the Education Act, 1902) made to each local education authority calculated upon the average attendance at all public elementary schools, and consisting of a sum of 4*s.* per scholar, and an additional sum of 1½*d.* per scholar for every complete 2*d.* by which the amount, which would be produced by a 1*d.* rate on the area of the authority, falls short of 10*s.* per scholar (*e*).

Grants to special schools.

Grants in aid of schools for blind, deaf, defective, or epileptic children are paid by the Board of Education in respect of certified schools in accordance with regulations made by them (*f*).

Reduction of parliamentary grants.

If in any year the total amount of parliamentary grants payable to a local education authority would make the amount payable out of other sources by the authority on account of their expenses in respect of elementary education less than the amount which would be produced by a rate of 3*d.* in the pound, the parliamentary grants are to be decreased, and the amount payable out of other resources is to be increased, by a sum equal in each case to half the difference (*g*).

Grants to necessitous areas and building grants.

Since 1906, in addition to the above grants, the Board of Education have made grants out of moneys specially provided by Parliament of lump sums to the local education authorities of a few specially necessitous areas, in aid of expenditure upon public elementary schools, and have similarly made since 1907 grants in aid of building public elementary schools (*h*).

SUB-SECT. 4.—*Loans.*

Borrowing by county council.

115. A local education authority which is the council of a county may borrow for the purposes of the Education Acts, as for the purposes of the Local Government Act, 1888 (*i*), with the difference

(*c*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 19 (2); Education Code (1890) Act, 1890 (53 & 54 Vict. c. 22), s. 2; Education Act, 1902 (2 Edw. 7, c. 42), Sched. III. (1).

(*d*) Elementary Education Act, 1891 (54 & 55 Vict. c. 56), s. 1; and see as to fees, p. 30, *ante*.

(*e*) Education Act, 1902 (2 Edw. 7, c. 42), s. 10.

(*f*) See note (*h*), *supra*; and p. 11, *ante*.

(*g*) Education Act, 1902 (2 Edw. 7, c. 42), s. 10.

(*h*) See the Appropriation Acts for the years in question; for building grants, see note (*b*), p. 11, *ante*.

(*i*) Education Act, 1902 (2 Edw. 7, c. 42), s. 19 (1), applying, in the case of councils having powers under the Education Acts (including councils having concurrent powers in respect of higher education (see p. 23, *ante*)), the provisions as to borrowing in respect of their general powers. The objects for which they may borrow under these provisions are, generally speaking, buildings and other permanent expenditure (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 69; as to borrowing powers of local authorities, generally, see title LOCAL GOVERNMENT). See, further, Education Act, 1902 (2 Edw. 7, c. 42), Sched. II. (3), providing that loans transferred to a council under the Act are to be treated as money borrowed under the Act. The Public Works Loan Commissioners may

that the maximum period for repayment of loans obtained since 28th August, 1907, is sixty years, instead of thirty years, as in the case of the latter purposes (*j*).

Borrowing by county borough, borough and district councils

A local education authority which is the council of a county borough, borough, or urban district, may borrow for the purposes of the Education Acts as for the purposes of the Public Health Acts (*k*), but upon the security of the fund or rate out of which their expenses are payable (*l*). Money so borrowed is not reckoned as part of the total debt of a county, nor as part of the debt of a county borough, borough, or urban district, for the purposes of certain statutory limitations upon borrowing by the authorities of such areas (*m*).

SUB-SECT. 5.—*Miscellaneous Receipts.*

Other receipts.

116. The receipts of a local education authority include, in addition to the foregoing receipts, (1) fees paid by, or on behalf of, parents of scholars, or by managers of voluntary schools, including fees paid by guardians (*n*); (2) the income of endowments (*o*); (3) the proceeds of sales, including sales of land (*p*); (4) contributions by parents in respect of the education of blind, deaf, defective, or epileptic children (*q*); (5) contributions by guardians towards the provision, enlargement, or maintenance of public elementary schools, and of schools or classes for defective or epileptic children (*r*); (6) contributions by parents towards the cost of furnishing meals to children attending public elementary schools (*s*), towards the cost

lend any money which an authority may borrow for the purposes of higher education (Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 8). For a special power to borrow in order to provide working balances for carrying the Education Act, 1902 (2 Edw. 7, c. 42), into effect, see Education (Provision of Working Balances) Act, 1903 (3 Edw. 7, c. 10), which gives power to borrow in certain circumstances for current expenses, contrary to the ordinary rule governing local authorities, as shown in *R.* v. *Reed* (*Sir Charles*) (1880), 5 Q. B. D. 483, C. A.

(*j*) Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 3. This section also authorises, subject to the approval of the Local Government Board, reborrowing to repay loans raised for the purposes of the Education Acts within sixty years from the date of the original loan.

(*k*) See note (*i*) on p. 50, *ante*; councils with concurrent powers only in respect of higher education are included. See title LOCAL GOVERNMENT.

(*l*) See p. 47, *ante*. Contributions of county councils towards the capital expenditure upon higher education of councils having concurrent powers only in respect of higher education are part of the security upon which the latter councils may borrow (Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 4 (2)); and see p. 46, *ante*.

(*m*) Education Act, 1902 (2 Edw. 7, c. 42), s. 19 (2); Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 69; Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 234 (2), (3); and see title LOCAL GOVERNMENT.

(*n*) See, as to fees, p. 30, *ante*, and p. 83, *post*.

(*o*) See for the power of a local education authority to be trustees of educational charities, p. 21, *ante*; for the allocation of the proceeds of certain endowments to parishes, see p. 48, *ante*.

(*p*) See, as to sales of land, p. 21, *ante*. Most local education authorities derive a small revenue from sales of cooked food, needlework, and other produce of special classes in schools. School buildings are also hired for public purposes, including elections, and for other purposes.

(*q*) See p. 44, *ante*.

(*r*) See p. 82, *post*.

(*s*) See p. 32, *ante*.

SECT. 8. Finance and Audit.

of children in industrial schools (*t*), and towards the cost of medical treatment of children in public elementary schools (*u*); (7) contributions of other local education authorities and councils (*x*), and other receipts.

SUB-SECT. 6.—*Audit.*

Audit.

117. The accounts of a local education authority which is the council of a county or urban district are to be audited as are the other accounts of the council. A local education authority which is the council of a borough must keep separate accounts of their receipts and expenditure in respect of education under the Education Acts, and those accounts are to be made up and audited as though the council were the council of a county, and the enactments relating to the audit of accounts of a county council apply accordingly, and are substituted for the provisions of the Municipal Corporations Act, 1882, relating to accounts and audit. The accounts of any receipts or payments intrusted by the local education authority to an education committee or to the managers of a public elementary school, or of a school provided by the authority under their powers with respect to higher education, are to be treated as the accounts of the local education authority, the managers being treated as officers of the authority for the purposes of the auditors' powers (*a*).

Audit of joint accounts.

118. The accounts of any receipts or payments intrusted to a joint education committee, or to a joint body of managers established by two or more local authorities in the exercise of their powers in that behalf, are to be audited as though the committee or body were a separate local education authority, and the enactments (including penal provisions) relating to the audit of the accounts of local education authorities apply accordingly. But the Local Government Board have power to direct otherwise as to the audit in such cases, and the scheme or instrument establishing the joint committee or body may, subject to the approval of the Local Government Board, make other directions as to the audit (*b*).

SECT. 9.—*Provisions specially applicable to London.*

Constitution of authority in London.

119. The system of education established under the Education Acts has, in London, certain special features (*c*).

(*t*) See p. 78, *post*.
(*u*) See p. 32, *ante*.
(*x*) See p. 46, *ante*.
(*a*) Education Act, 1902 (2 Edw. 7, c. 42), s. 18 (3), (5); Education (Administrative Provisions) Act, 1909 (9 Edw. 7, c. 29), s. 2; and see title LOCAL GOVERNMENT, generally, as to the accounts and audit of local authorities. The accounts of county councils are governed by s. 71 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), and those of urban district councils by s. 58 of the Local Government Act, 1894 (56 & 57 Vict. c. 73).
(*b*) Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43) s. 6.
(*c*) Education Act, 1902 (2 Edw. 7, c. 42), s. 27 (1); Education (London) Act, 1903 (3 Edw. 7, c. 24). The latter Act provides for the formal adaptation of the former to London, and also makes some material modifications, the chief of which are stated in the text. For other modifications, see Education (London) Act, 1903 (3 Edw. 7, c. 24), s. 3 (1) (London School Board schools outside London); s. 5 (1) and Sched. I. (6), (10) (commencement and passing of principal Act applied); Sched. I. (5) (borrowing); Sched. I. (8) (substitution of Treasury for Local Government Board); Sched. I. (11) (length of managers' appointments).

SECT. 9. Provisions specially applicable to London.

The local education authority for London is the London County Council (*d*). The council of a metropolitan borough, a phrase which for this purpose includes the City of London, are not a local education authority for the purposes either of elementary or higher education, and have no concurrent powers under the Education Acts in respect of higher education (*e*).

Higher education.

The limitation of rate aid in respect of higher education to 2*d*. in the pound in the case of county councils does not apply to the London County Council (*f*).

Elementary education.

Councils of metropolitan boroughs, and the common council of the City of London, appoint two-thirds of the managers of public elementary schools provided by the local education authority in thier respective areas, and determine the number of managers and the manner of grouping such schools under one body of managers, but only after consultation with the authority, and subject to the approval of the Board of Education (*g*), and are the minor local authorities for the purpose of appointing managers of voluntary schools in those areas (*h*). Any such council must be consulted by the local education authority as to the site of any new public elementary school which the authority propose to provide in their area (*i*).

Apportionment of expenses.

The rules applicable in the case of other county councils with reference to apportioning expenses between parishes do not apply to the London County Council (*k*).

Endowments and trust deeds.

The rules as to the apportionment in aid of parochial rates of endowments of voluntary schools, which must be applied wholly or partly to those purposes of a public elementary school for which the authority are bound to provide, do not apply in the case of voluntary schools in London. The Board of Education may make schemes

(*d*) The London County Council is the council of an adminstrative county (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40). For a special provision for the access of ratepayers to the minutes of the Education Committee of the London County Council, see Education (London) Act, 1903 (3 Edw. 7, c. 24), Sched. I. (7).

(*e*) Education (London) Act, 1903 (3 Edw. 7, c. 24), Sched. I. (1). For the City of London, see *ibid.*, s. 4 (2). The borough council of Woolwich have concurrent powers in respect of higher education (see *ibid.*, Sched. I. (1) (b); Education Act, 1902 (2 Edw. 7, c. 42), Sched. III. (11), and London Government Act, 1899 (62 & 63 Vict. c. 14), s. 19). For councils with concurrent powers, see p. 23, *ante*.

(*f*) Education (London) Act, 1903 (3 Edw. 7, c. 4), Sched. I. (2); and see, for the limitation in other cases, p. 23, *ante*.

(*g*) *Ibid.*, s. 2 (1); and see s. 3 (2) as to boundary schools. One-third of the managers ordinarily must be women (*ibid.*, s. 2 (1)). The management and grouping provisions of the Education Act, 1902 (2 Edw. 7, c. 42), do not apply to London so far as regards schools provided by the local education authority (*ibid.*, Sched. I. (3)). For an exception from the powers of metropolitan boroughs in the case of non-local schools, see *ibid.*, s. 2 (3).

(*h*) *Ibid.*, Sched. I. (1) (a); and Education Act, 1902 (2 Edw. 7, c. 42), s. 24 (2).

(*i*) Education (London) Act, 1903 (3 Edw. 7, c. 24), s. 2 (2). An enlargement does not for the purposes of this provision count as a new school, unless the acquisition of a further site be made with compulsory powers; in the case of compulsory powers, the Board are to take the view of the borough council into account before making the order (*ibid.*); and see, as to enlargements, p. 26, and as to compulsory powers, p. 27, *ante*). For an exception in the case of non-local schools, see *ibid.*, s. 2 (3).

(*k*) *Ibid.*, Sched. I. (4).

SECT. 9. Provisions specially applicable to London.

for the application of moneys which, under those rules, would be payable to the local education authority, and, in so doing, must regard primarily the interests of the locality which the endowment was intended to benefit (*l*).

Where the local education authority aid any institution by grants from their funds, conditions in any trust deed or scheme imposing any limit on the number of members or requiring any qualification of members of the governing body do not apply as respects governors appointed by the authority (*m*).

Part IV.—Duties of Parents and Employers.

SECT. 1.—*In General.*

Parents and employers.

120. The duties of parents to secure that their children are educated, and similar duties of employers with regard to children in their employment, arise for the most part under the Education Acts, but with regard to children employed in factories and workshops special duties are imposed by legislation relating to such children. Important functions in respect of the enforcement of such duties are exercised by local education authorities, and certain central authorities (*a*).

Parents' contributions.

The statutory liability of parents to contribute in certain cases to the cost of the education of their children is treated in connection with the particular powers of public authorities to incur expenses to which parents can be made to contribute (*b*).

(*l*) Education (London) Act, 1903 (3 Edw. 7, c. 24), Sched. I. (4); and for the rules relating to such endowments, see p. 48, *ante*.

(*m*) *Ibid.*, Sched. I. (9).

(*a*) For duties arising under the Education Acts, and applicable to all classes of children, see pp. 55 *et seq.*, *post*; for duties respecting children in factories and workshops, see pp. 67 *et seq.*, *post*. The central authorities concerned are the Board of Education and, in the case of children in factories and workshops, the Secretary of State for the Home Department. The duties of employers dealt with are all duties in respect of education; in their practical effect they must be considered in connection with the general subject of the employment of children, and the restrictions, general in character, placed thereon, as to which see, generally, title INFANTS AND CHILDREN; and compare s. 50 of the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), which provides that nothing in the Act shall prejudice the effect of, or derogate from, any provision relating to the committal of children to industrial schools or the employment of children contained in any previous Act of Parliament which may be more stringent in its provisions than that Act. Certain of the rules relating to education under the Poor Law, and in Reformatory and Industrial Schools also, in a sense, form part of the law of compulsory education, but as they only arise in special circumstances, and otherwise belong to separate legal branches of the educational system, they are incorporated under several heads (see pp. 70, 81, *post*). As to the view taken by the common law, and by equity as to parental duties in respect of education, see p. 4, *ante*.

(*b*) As to the parent's duty to contribute to expenses incurred in connection with education, see note (*e*), p. 31, *ante* (school fees), p. 32, *ante* (medical attendance), p. 33, *ante* (provision of meals), p. 44, *ante* (blind, deaf, defective and epileptic children), p. 78, *post* (Reformatory and Industrial Schools). As to contractual liabilities as between parent and schoolmaster, see p. 122, *post*.

SECT. 2.—*Duties and Liabilities of Parents.*

SUB-SECT. 1.—*In General.*

SECT. 2. **Duties and Liabilities of Parents.**

Duties of parents.

121. Parents in general have two main duties in respect of the education of their children, largely coincident in practice but technically distinct and enforceable by distinct remedies (*c*).

The parent (*d*) of a child between the ages of five and fourteen years (*e*) must cause that child to receive efficient elementary instruction in reading, writing, and arithmetic (*f*), and must cause it to attend school in accordance with the bye-laws of the local education authority in force in the area, or part of the area, where the child resides (*g*), but in either case subject to the existence of certain reasonable excuses for non-performance of the duty (*h*).

Modifications in case of blind, deaf, defective or epileptic child.

122. In the case of a blind, deaf, defective, or epileptic child within the meaning of the Education Acts (*i*) the period of compulsory education extends to sixteen years, and the attendance of any such child at school may be enforced as if it were required by the bye-laws of the local education authority, and no such child may obtain total or partial exemption under such bye-laws from the obligation to attend school (*j*).

In the case of a blind or deaf child, the above-mentioned duty of a parent to cause his child to receive efficient elementary instruction includes a duty to cause it to receive instruction suitable to it (*k*), and, in the case of a defective or epileptic child over seven years of age, includes a duty to cause it to attend a certified special class or school if there be one accessible (*l*).

(*c*) The nature of the duties and of the reasonable excuses (see *infra*) for non-compliance with them imply that, ordinarily, the fulfilment of one involves fulfilment of the other, and that a lawful excuse for the non-fulfilment of one duty will be an answer to a charge as regards the other; but see note (*s*) p. 56, *post*.

(*d*) "Parent" in the Education Acts includes guardian and every person who is liable to maintain or has the actual custody of any child (Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 3); the fact that some person other than the real parent has the "actual custody" of the child, and is therefore liable for its education, does not by itself prevent the real parent from being simultaneously liable (*London School Board* v. *Jackson* (1881), 7 Q. B. D. 502).

(*e*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 48; as to blind, deaf, defective, or epileptic children, see next paragraph.

(*f*) *Ibid.*, s. 4, and see p. 56, *post*.

(*g*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 74, and see p. 58, *post*. For the power of a county council to make different bye-laws for different parts of their area, see p. 59, *post*.

(*h*) For the excuses, see pp. 56, 60, *post*.

(*i*) For definitions, see p. 41, *ante*.

(*j*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 11; Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 11. For exemptions under bye-laws, see p. 61, *post*.

(*k*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 1. For a further special provision as to a parent's duty in the case of a blind or deaf child (relating to statutory excuses), see p. 60, *post*.

(*l*) Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 4 (1). As to certified schools or classes, see p. 44, *ante*. For a special provision in such cases relating to statutory excuses, see p. 61, *post*. As to the parent's duty to cause a defective or epileptic child to attend the medical examination of the local authority, see p. 42, *ante*. For a special power as to epileptic children, see p. 56, *post*.

SECT. 2. Duties and Liabilities of Parents.

123. It is the duty of a local education authority to enforce these duties of parents (*m*), and for that purpose to appoint officers to whom the execution of the duty is specially assigned (*n*).

SUB-SECT. 2.—*Duty to cause Child to receive efficient Elementary Instruction.*

Application for school attendance order.

124. If the parent of any child above the age of five years who is prohibited from being taken into full time employment (*o*) habitually and without reasonable excuse neglects to provide efficient elementary instruction for his child, the local education authority must (*p*), after due warning to the parent, complain to a court of summary jurisdiction with a view to obtaining a school attendance order (*q*).

It is a "reasonable excuse" in the above connection that there is not within two miles, measured according to the nearest road, from the residence of the child, any public elementary school open which the child can attend (except in cases where the local education authority provide suitable means of conveyance for the child within a reasonable distance of its home and such a school), or that the absence of the child from school is caused by sickness or any unavoidable cause (*r*), or that there is any other excuse which is a reasonable excuse (*s*).

The local education authority is under a like duty to apply for an attendance order if any child is found habitually wandering, or not under proper control, or in the company of rogues, vagabonds, disorderly persons, or reputed criminals (*t*).

Epileptic children.

125. In the case of an epileptic child whose age exceeds seven years, the local education authority may, if they think fit, apply to a court of summary jurisdiction for an order requiring the child to

(*m*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), ss. 11, 13, 23.

(*n*) *Ibid.*, s. 28.

(*o*) The reference is to the prohibitions stated in sub-sect. 1 of sect. 3 of this Part (p. 62, *post*), *i.e.*, those imposed by s. 5 of the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), as amended by s. 4 of the Elementary Education Act, 1880 (43 & 44 Vict. c. 23), and by s. 2 of the Elementary Education (School Attendance) Act, 1893 (56 & 57 Vict. c. 51); *Winyard* v. *Toogood*, *Hance* v. *Fortnum* (1882), 10 Q. B. D. 218; overruling *Saunders* v. *Crawford* (1882), 9 Q. B. D. 612.

(*p*) For a qualification of the duty, see p. 58, *post*.

(*q*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 11.

(*r*) *Ibid.*, s. 11; Education (Administration Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 14 (the exceptions in the case of a blind, deaf, defective, or epileptic child apply as in the case of bye-laws, see p. 60, *post*).

(*s*) See *London School Board* v. *Jackson* (1881), 7 Q. B. D. 502, *per* POLLOCK, B., at p. 504, and cases cited in note (*b*) on p. 60, *post*, with reference to the parallel matter of excuses for non-compliance with bye-laws which, *semble*, are applicable here as showing that the statutory excuses are not exhaustive; see also *R.* v. *Morris*, *Ex parte Broadbent* (1910), 26 T. L. R. 419. The truancy of a child without fault of the parent is not an answer to an application for an attendance order, though it might be to a summons under a bye-law, or to a summons for a fine for disobedience to an attendance order (*London County Council* v. *Hearn* (1909), 78 L. J. (K. B.) 414).

(*t*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 11. See also Children Act, 1908 (8 Edw. 7, c. 67), s. 58; and title INFANTS AND CHILDREN.

be sent to a certified school for epileptic children, and if a parent fails to comply with an order he is deemed to have failed to cause that child to receive efficient elementary instruction, and may be proceeded against accordingly (*u*).

School attendance order.

126. The court, upon an application by a local education authority for a school attendance order, may order the child to attend some certified efficient school (*v*) willing to receive it (*w*), and named in the order, being either such as the parent may select, or, if he select none, such public elementary school as the court think expedient. Any excuse which would have been a reasonable excuse for neglect by a parent to provide efficient elementary instruction for his child (*a*) is an excuse for non-compliance with an attendance order (*b*).

Non-compliance with school attendance order.

In the absence of any such excuse the court, on complaint by a local education authority of such non-compliance, may proceed as follows: (a) in the first case of non-compliance, if the parent (*c*) fails to appear, or fails to satisfy the court that he has used all reasonable efforts to secure compliance, a fine may be imposed not exceeding, with costs, 20*s*. (*d*); or if the parent satisfies the court that he has used such reasonable efforts (*e*), the child may

(*u*) Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 4 (2). As to epileptic children generally, see p. 41, *ante*.

(*v*) A certified efficient school means a public elementary school, or any workhouse school certified to be efficient by the Local Government Board, or any elementary school which is not conducted for private profit, and is open at all reasonable times to the inspection of His Majesty's inspector of schools and requires the like attendance from its scholars as is required in a public elementary school, and keeps such register of attendances as may be for the time being required by the Board of Education, and is certified by the Board to be an efficient school (Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 48); see p. 82, *post*, as to workhouse schools.

(*w*) The complaining local authority must show to the court that there is some particular certified efficient school willing to receive the child, as otherwise the attendance order cannot be made (*Thompson* v. *Rose* (1891), 65 L. T. 851).

(*a*) See note (*s*), p. 56, *ante*, and note (*b*), p. 60, *post*.

(*b*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), ss. 11, 12. It is not a reasonable excuse for non-compliance with an attendance order that the child is attending, but irregularly, a school different from that named in the order, but (*semble*, *per* DARLING J.) *secus*, if the attendance at the different school is regular (*Isle of Wight County Council* v. *Holland* (1909), 73 J. P. 507). A parent may allege as a defence to a complaint for non-compliance that the child is being efficiently instructed at home in the same manner as he could have alleged it upon the application for the attendance order (*R.* v. *Morris*, *Ex parte Broadbent* (1910), 26 T. L. R. 419). Upon the making of an attendance order the child may be sent to a certified day industrial school by agreement between the managers of the school, the parent, and the local education authority (Children Act, 1908 (8 Edw. 7, c. 67), s. 79).

(*c*) A surviving parent, though having the custody of and being liable to maintain a child, cannot be proceeded against for failing to comply with an attendance order made against the other parent who died after the order was made (*Hance* v. *Fairhurst* (1882), 51 L. J. (M. C.) 139).

(*d*) See note (*t*) on p. 60, *post*.

(*e*) Where a parent, against whom an attendance order had been made, used such reasonable efforts to cause his child to attend school in accordance with the order as would, according to *Belper School Attendance Committee* v. *Bayley* (1882), 9 Q. B. D. 259, have amounted to a reasonable excuse for non-compliance with a bye-law, it was held that he had a defence against being fined for disobeying

SECT. 2. Duties and Liabilities of Parents.

be ordered to be sent to a certified day industrial school, or, if there appear to the court to be no such school suitable to the child, to a certified industrial school (*f*), without any fine being inflicted upon the parent; (b) in any case of non-compliance after the first case the court may order the child to be sent to a certified day industrial school, or in the alternative, as stated above, to a certified industrial school, and may also fine the parent, or it may fine the parent for each non-compliance without sending the child to an industrial school. Complaints with regard to continuing non-compliance may not be repeated at any less interval than two weeks (*g*).

Duty of authority.

127. It is the duty of a local education authority, where they are informed by any person of any child in their jurisdiction who is stated by that person to be liable to be so ordered by a court to attend school or to be sent to an industrial school, to take proceedings accordingly, unless they think it inexpedient to take such proceedings (*h*).

SUB-SECT. 3.—*Duty to cause Child to attend School in accordance with Bye-laws.*

Duty to make bye-laws.

128. It is the duty of the local education authority to make bye-laws for every part of their area in which bye-laws were not in force on August 26th, 1880, respecting the attendance of children at school (*i*),

the order, but not a reasonable excuse for non-compliance with it, and that the magistrates had power to order the child to be sent to an industrial school (*Hewett* v. *Thompson* (1889), 60 L. T. 268); see also *London County Council* v. *Hearn* (1909), 78 L. J. (K. B.) 414; and see note (*s*), p. 56, *ante*, and note (*b*), p. 60, *post*.

(*f*) As to industrial schools and the detention of children in them, see p. 72, *post*. The last paragraph of s. 12 of the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), is repealed by the Children Act, 1908 (8 Edw. 7, c. 67), Sched. III. See *ibid.*, ss. 44, 58 (6), (7), 78, 79, 83; and see also titles CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 620; INFANTS AND CHILDREN. The provisions of the Children Act, 1908 (8 Edw. 7, c. 67), in effect take the place of previous provisions respecting industrial schools. See note (*c*), p. 71, *post*.

(*g*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 12; Elementary Education Act, 1900 (63 & 64 Vict. c. 53), s. 6 (2).

(*h*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 13.

(*i*) Elementary Education Act, 1880 (43 & 44 Vict. c. 23), s. 2; Education Act, 1902 (2 Edw. 7, c. 42), s. 5. For the remedy for default in making bye-laws, see p. 13, *ante*. To ascertain the state of the law for the time being in any particular area with regard to school attendance, it is necessary to consider both the history of the statutes relating to the subject, and also the action of the local education authority and the Board of Education in exercising the powers vested in them by those statutes. The Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 74, gave power to school boards to make bye-laws requiring children to attend school, but left it to the discretion of the school board to settle the ages at which compulsion should apply, subject to three limitations—(1) that the ages should not be lower than five or higher than thirteen years; (2) that when compulsion was applied at any age over ten years certain exemptions were to be allowed to children who attained certain standards of education to be fixed by the bye-laws; (3) that the approval of the Education Department was required to the bye-laws. The Elementary Education Act, 1876 (39 & 40 Vict. c. 79), constituted school attendance committees for districts which had no school boards, with certain powers to make bye-laws for their districts. By s. 4 of the Elementary Education Act, 1880 (43 & 44 Vict. c. 23), a duty to make such bye-laws was imposed upon all school boards and school attendance

and to enforce those bye-laws when made (*k*), and for that purpose to have officers to whom the enforcement is specially assigned (*l*). The bye-laws require to be duly approved by the Board of Education, and when so approved have statutory force (*m*). Bye-laws are to be made in accordance with a prescribed procedure, and may be revoked or altered by subsequent bye-laws (*n*).

Where the local education authority are a county council, they may, if they think fit, make different bye-laws for different parts of their area (*o*).

Purposes for which bye-laws may be made.

129. Bye-laws may be made for the following purposes: (a) requiring the parents of children of such age as may be fixed by the bye-laws, being not less than five years nor more than fourteen years, and subject to the exemptions mentioned below, to cause (*p*)

committees in whose districts no bye-laws were in force at the passing of the Act. By s. 6 (1) of the Elementary Education Act, 1900 (63 & 64 Vict. c. 53), the compulsion limit of thirteen years was changed to one of fourteen years. By the combined effect of s. 1 of the Elementary Education (School Attendance) Act, 1893 (56 & 57 Vict. c. 51), and s. 1 of the Elementary Education (School Attendance) Act, 1893, Amendment Act, 1899 (62 & 63 Vict. c. 13) (commonly known as Robson's Act), the age of ten years fixed by s. 74 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), as the age at which bye-laws must begin to allow exemptions was raised to twelve years, and it was provided that in all bye-laws already made twelve years should be read for any lower age in the provisions for the statutory exemptions. Robson's Act further provided for (1) a special exemption at the option of the local authority in the case of children employed in agriculture, and (2) an obligatory partial exemption in the case of children over twelve years who show a prescribed standard of previous attendance at school. The Act does not define partial attendance, and notwithstanding the decisions in *Stevenson* v. *Goldstraw*, *Stevenson* v. *Craig*, [1906] 2 K. B. 299, it is doubtful what effect the latter provision has in cases where the bye-laws provide only for total exemption. By s. 5 of the Education Act, 1902 (2 Edw. 7, c. 42), school boards and school attendance committees were abolished, and their powers and duties conferred upon the local education authority in respect of the whole area of the authority. The action of the Board of Education (and its predecessor, the Education Department) in approving bye-laws has resulted in there being no area where the bye-laws do not require attendance from five to thirteen years, and only four where the higher limit is not fourteen.

(*k*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 23.

(*l*) *Ibid.*, s. 28.

(*m*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 74; Elementary Education Act, 1900 (63 & 64 Vict. c. 53), s. 6 (4).

(*n*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 74; and see as to notice by a local education authority, p. 22, *ante*. The local education authority, not less than one month before submitting any bye-law for the approval of the Board of Education, must deposit a printed copy of the proposed bye-laws at their office for inspection by any ratepayer, and must supply a printed copy of them gratis to any ratepayer, and must publish a notice of the deposit.

(*o*) Education Act, 1902 (2 Edw. 7, c. 42), Sched. III. (4).

(*p*) There must be an effective causing to attend; a parent who continued to send his child to a voluntary school after the managers (the case being prior to the passing of the Education Act, 1902 (2 Edw. 7, c. 42)), with the consent of the Education Department, had refused to admit the child, there being other public elementary schools which the child could attend, did not cause it to attend school (*Jones* v. *Rowland* (1899), 80 L. T. 630); nor did a parent who, being able to pay fees lawfully charged in a school, sent his child to the school without the money needed to pay the fees, so that the child was refused admittance

SECT. 2. **Duties and Liabilities of Parents.**

those children, unless there is some reasonable excuse, to attend (*q*) school; (b) determining the time during which children are so to attend (*r*).

Penalties.

Penalties, to be recovered summarily (*s*), may be imposed by the bye-laws for any breach not exceeding a fine for each offence of such sum as will with costs amount to 20*s*. (*t*).

"Reasonable excuse."

130. It is a reasonable excuse for a parent failing to cause his child to attend school as required by the bye-laws (1) if the child is under efficient instruction in some other manner; or (2) if the child has been prevented from attending school by sickness or any unavoidable cause; or (3) if, subject as mentioned below, there is no public elementary school open which the child can attend within such distance, not exceeding three miles, measured according to the nearest road from the residence of the child, as the bye-laws may prescribe (*a*); or (4) if there is any other excuse for such failure which is a reasonable excuse (*b*); but the third of these excuses does not apply when a local education authority provide suitable means of conveyance for a child between a reasonable distance of its home and a public elementary school (*c*).

Blind, deaf, defective, or epileptic children.

131. The fact of a child being blind or deaf (except in the case of a deaf child under seven years of age), or the fact that there is not within any particular distance from the residence of a blind or deaf child any public elementary school which the child can attend, is not of itself a reasonable excuse for not causing the child to attend

(*Saunders* v. *Richardson* (1881), 7 Q. B. D. 388, overruling *Richardson* v. *Saunders* (1881), 6 Q. B. D. 313; *London School Board* v. *Wright* (1884), 12 Q. B. D. 578, C. A.); nor did a parent cause his child to attend school in a case where, the facts being otherwise similar to those last stated, the child was actually admitted to the school without the proper fee being paid, but only by the indulgence of the teachers (*London School Board* v. *Wood* (1885), 15 Q. B. D. 415). A parent being under a duty to cause his child to be educated and to attend school, a promise to pay fees charged in a public elementary school cannot be implied merely from his sending his child to the school (*London School Board* v. *Wright*, *supra*). As to school fees, see p. 30, *ante*.

(*q*) The bye-laws cannot require children to study at home, and a teacher who detains a child after school hours, to punish it for not learning a home lesson is guilty of an assault (*Hunter* v. *Johnson* (1884), 13 Q. B. D. 225).

(*r*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 74.

(*s*) *Ibid.*, s. 92; Elementary Education Act, 1873 (36 & 37 Vict. c. 86), s. 23.

(*t*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 74; Elementary Education Act, 1900 (63 & 64 Vict. c. 53), s. 6 (2). "Costs" for the purposes of the limit of 20*s*. does not include the costs of a distress warrant, and such a warrant may be issued for more than 20*s*. if the excess is due to the costs of the warrant (*Cook* v. *Plaskett* (1882), 46 L. T. 383).

(*a*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 74.

(*b*) The first three excuses are statutory, but they are not exhaustive of possible excuses (*Belper School Attendance Committee* v. *Bayley* (1882), 9 Q. B. D. 259; *London School Board* v. *Duggan* (1884), 13 Q. B. D. 176; *Gillies* v. *Quigley* (1905), 8 F. (Court of Justiciary, 1) (a case on similar words in the Education (Scotland) Act, 1872 (35 & 36 Vict. c. 62), s. 70); *Marshall* v. *Graham*, [1907] 2 K. B. 112; and see POLLOCK, B., in *London School Board* v. *Jackson* (1881), 7 Q. B. D. 502, at p. 504; see also note (*s*), p. 56, *ante*.

(*c*) Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 14 (1).

school (*d*). The parent of a defective or epileptic child, over seven years of age, is not excused from his duty to cause it to attend a certified special class or school by reason only that a guide or conveyance for the child is necessary (*e*).

Limitations and conditions of bye-laws.

132. The bye-laws of a local education authority (1) must not prevent the withdrawal of any child from any religious observance or instruction in religious subjects (*f*); (2) must not require any child to attend school on any day exclusively set apart for religious observance by the religious body to which its parent belongs (*g*); (3) must not be contrary to anything in any Act for regulating the education of children employed in labour (*h*); (4) are not rendered invalid merely by reason of containing provisions more stringent than the other rules contained in the Education Acts with reference to the education or employment of children (*i*).

Exemptions to be allowed.

133. The bye-laws must allow exemptions (*k*) from attendance in accordance with the following provisions: (1) any bye-law requiring a child between twelve and fourteen years of age to attend school must provide for the total or partial exemption of that child from the obligation to attend school if one of His Majesty's inspectors (*l*) certifies that the child has reached a standard of education specified in the bye-law (*m*); (2) a child shall be entitled to obtain partial exemption from school attendance on attaining the age of twelve years, if that child has made 300 attendances in not more than two schools during each year for five preceding years, whether consecutive or not (*n*); (3) as respects children to be employed in

(*d*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 1. For the parent's duty in the case of blind or deaf children, see p. 55, *ante*. The rule in the text is applicable also in relation to the duty to cause such a child to receive efficient elementary instruction (see p. 56, *ante*, and note (*r*) thereon).

(*e*) Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 4 (1); and see p. 44, *ante*, as to certified schools; and see p. 55, *ante*, as to the parent's duty. As to the power of a local education authority to provide guides and conveyances, see p. 21, *ante*.

(*f*) See as to the conscience clause in reference to public elementary schools, p. 29, *ante*.

(*g*) See p. 29, *ante*. "Exclusively set apart" does not mean that the whole day must be devoted to religious observance, and Ascension Day is a day so set apart by the Church of England (*Marshall* v. *Graham*, [1907] 2 K. B. 112).

(*h*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 74. As to the effect of this provision and of subsequent legislation in a case where a child is complying, *e.g.*, with the educational rules under the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), see *Bury* v. *Cherryholm* (1876), 1 Ex. D. 457; *Mellor* v. *Denham* (1879), 4 Q. B. D. 241; *Stevenson* v. *Goldstraw*, *Stevenson* v. *Craig*, [1906] 2 K. B. 298; the cases are not easy to reconcile. See also pp. 62, 69, *post*.

(*i*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 50; *i.e.*, the rules referred to in sects. 1 and 2 of this Part other than rules relating to school attendance under the bye-laws.

(*k*) As to blind, deaf, defective, or epileptic children, see p. 55, *ante*.

(*l*) As to His Majesty's inspectors, see p. 12, *ante*.

(*m*) Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 74; Elementary Education (School Attendance) Act, 1893 (56 & 57 Vict. c. 51), s. 1; Elementary Education (School Attendance) Act (1893) Amendment Act, 1899 (62 & 63 Vict. c. 13), s. 1.

(*n*) Elementary Education (School Attendance) Act (1893) Amendment Act,

SECT. 2. Duties and Liabilities of Parents.

agriculture, a local education authority may, by bye-laws for any parish within their area, fix thirteen years as the minimum age for exemption from school attendance for such children, but in that case any such children who are over eleven and under thirteen years, and have passed the standard fixed for partial exemption from school attendance by the bye-laws of the local education authority, shall not be required to attend school more than 250 times in any year (*o*).

SECT. 3.—*Duties and Liabilities of Employers.*

SUB-SECT. 1.—*In General.*

Who may not be employed.

134. Subject to the exceptions mentioned below, a person (*p*) must not take into his employment (1) any child in such a manner as to prevent that child from attending school in accordance with the bye-laws of the local education authority in force in the area (*q*); or (2) any child, being of the age of ten years or upwards, who has not obtained a certificate of having reached the standard of education fixed by the bye-laws in force in the area for the total or partial exemption of children of the like age from the obligation to attend school (*r*); or (3) any child being of the age of ten years or upwards to whom the bye-laws in force in the area do not apply, unless that child has obtained a certificate of proficiency in reading, writing, and elementary arithmetic, or of previous due attendance at a certified efficient school (*s*); or is attending school in accordance

1899 (62 & 63 Vict. c. 13), s. 1. As to what is the meaning of "partial attendance" if the bye-laws make no provision for partial attendance, *quære;* but see *Stevenson* v. *Goldstraw, Stevenson* v. *Craig*, [1906] 2 K. B. 298, where, *semble*, it is treated as equivalent to attendance by a child who is working half-time in a factory under s. 68 of the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), p. 68, *post*.

(*o*) Elementary Education (School Attendance) Act (1893) Amendment Act, 1899 (62 & 63 Vict. c. 13), s. 1. The total exemption to be allowed under this rule to agricultural children must, *semble*, if allowed, be allowed unconditionally, and not made dependent on any certificate of a standard of education having been previously obtained (*Strong* v. *Treise*, [1909] 1 K. B. 613).

(*p*) See as to employers of children in factories and workshops, p. 67, *post*. It must be recollected that the limitations upon employment here dealt with are educational limitations only. For powers to impose general limitations, see title INFANTS AND CHILDREN, and the Employment of Children Act, 1903 (3 Edw. 7, c. 45).

(*q*) Elementary Education (School Attendance) Act, 1893 (56 & 57 Vict. c. 51), s. 2.

(*r*) Elementary Education Act, 1880 (43 & 44 Vict. c. 23), s. 4.

(*s*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 5. A certificate of proficiency for the purpose of this rule is a certificate given in accordance with regulations made by the Board of Education that the child has reached the standard of reading, writing, and elementary arithmetic fixed by standard IV. of the Code of 1876, or any higher standard. A certificate of due attendance is a certificate given in accordance with similar regulations, that a child has attended school according to the following standard, namely, 300 attendances after five years of age in not more than two schools during each year for five years, whether consecutive or not (attendance in this connection means an attendance as defined by the Code of 1876, and where the attendance is at a certified day industrial school includes such attendance as may be directed for the purpose by the Secretary of State, and, where the attendance is at a workhouse school, includes such attendance as may be directed by the Local Government Board) (*ibid.*, s. 24, and Sched. I.; Elementary Education Act,

with the provisions of the Factory and Workshop Act, 1901 (*t*). For the purposes of the foregoing rules a parent who employs his child in any labour exercised by way of trade, or for the purposes of gain, is regarded as a person taking the child into his employment (*a*).

Exemptions.

135. A person does not commit an offence against the foregoing rules of this section if he satisfies the court having cognisance of the case (1) (subject as mentioned below) that during the employment there is not within two miles, or such greater distance, not exceeding three miles, as may be prescribed by the bye-laws, measured according to the nearest road, from the residence of the child, any public elementary school open which the child can attend; or (2) that the employment, by reason of being during the school holidays, or during the hours during which the school is not open, or otherwise, does not interfere with the efficient elementary instruction of the child, and that the child obtains that instruction by regular attendance for full time at a certified efficient school (*b*), or in some equally efficient manner; or (3) that the employment is exempted by a notice of the local education authority issued as follows: The local education authority may issue a notice exempting from the prohibitions and restrictions mentioned in this sub-section (other than any prohibitions and restrictions imposed by any bye-law made by a local education authority) the employment of children above the age of eight years for the necessary operations of husbandry and the ingathering of crops, so as to apply to any period or periods named in the notice, not exceeding in the whole six weeks, between the 1st of January and the 31st of December in any year. The authority must send a copy of the notice to the Board of Education and to the overseers of every parish in their

1900 (63 & 64 Vict. c. 53), s. 7). Such certificate must be granted free of charge to any child entitled thereto, and the Board of Education are empowered to make regulations controlling such certificate and certificates of age, the regulations to be laid before Parliament and obeyed by local education authorities and managers of certified efficient schools (Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 24). As to the Code, see p. 10, *ante*; as to industrial and workhouse schools, see pp. 70, 82, *post*; for the definition of certified efficient school, see p. 57, *ante*.

(*t*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 5; and see note (*h*), p. 61, *ante*, and cases cited therein, and p. 67, *post*.

(*a*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 47. This definition is not intended to cover the domestic employment of children. A father who kept a child at home to manage his house was held not to have taken it into his employment under the definition, and it made no difference that the effect of the child being at home was to enable the mother to go out and work for gain (*Mather* v. *Lawrence*, [1899] 1 Q. B. 1000); nor did a father who kept a delicate child at home, and, by a doctor's advice, let the child help him casually in his trade, but without making any profit out of its help (*R.* v. *Austin* (1906), 71 J. P. 29). The proper remedy, if any, in such cases is to proceed against the parent, *qua* parent, either under the bye-laws of the local education authority for failure to cause the child to attend school (see p. 58, *ante*), or under s. 11 of the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), for neglect to cause the child to receive efficient elementary instruction (see p. 56, *ante*, *Mather* v. *Lawrence*, *supra*).

(*b*) See p. 57, *ante*.

SECT. 3. Duties and Liabilities of Employers.

area, and the latter must have it affixed to the door of all churches and chapels in the parish, and the notice may be further advertised as the authority think fit (*c*). The first of the above defences is not available when the local education authority provide suitable means of conveyance for a child between a reasonable distance of its home and a public elementary school (*d*).

Penalties.

136. Any person who takes a child into his employment in contravention of the foregoing rules is liable, on summary conviction, in respect of each offence to a fine not exceeding 40*s.* (*e*).

Duty of local education authority.

137. It is the duty of the local education authority to enforce the above-mentioned duties of employers, and for that purpose to appoint officers to whom the execution of the duty is specially assigned, except in the case of employers of children in factories, workshops, and mines, and the above-mentioned duties of those employers are to be enforced by the inspectors and sub-inspectors under the Acts regulating factories, workshops, or mines respectively (*f*), but the local education authority must assist those inspectors and sub-inspectors in the performance of their duty by information or otherwise (*g*).

SUB-SECT. 2.—*Default of Agents and Parents.*

Agents.

138. Where the offence of taking a child into employment in contravention of the foregoing rules is in fact committed by an agent or workman of the employer, the agent or workman is liable to a penalty as if he were the employer (*h*).

False representation.

139. Where a child is taken into employment in contravention of the foregoing rules on the production, by or with the privity of the parent, of a false or forged certificate, or on the false representation of the parent that the child is of an age at which the employment is not in contravention of those rules, that parent is liable in respect of each offence to a fine not exceeding 40*s.* (*i*).

Employer ignorant.

140. Where an employer charged with breaking the foregoing rules proves that he has used due diligence to enforce them, and either that some agent or workman has employed the child without his knowledge or consent, or that the child was employed either on the production of a forged or false certificate and under the belief in good faith in the genuineness and truth of the certificate, or on the representation by his parent that the child was of an age at which his employment would not be a breach of the rules, and under the belief in good faith in the representation, the employer

(*c*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 9, as modified by the Elementary Education (School Attendance) Act, 1893 (56 & 57 Vict. c. 51), s. 2.
(*d*) Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 14 (1).
(*e*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 6.
(*f*) See p. 70, *post*; and title FACTORIES AND SHOPS.
(*g*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), ss. 7, 28.
(*h*) *Ibid.*, s. 39.
(*i*) *Ibid.*

is exempt from any penalty (*k*), and where he satisfies the local education authority, inspector (*l*), or other person about to institute a prosecution that he is so exempt by reason of some agent, workman, or parent being guilty, and gives all facilities for proceeding against and convicting that agent, workman, or parent, the proceedings shall be instituted against that agent, workman, or parent, and not against the employer (*m*).

SECT. 4.—*Legal Proceedings.*

Must be authorised.

141. No legal proceedings for non-attendance or irregular attendance at school may be commenced in a court of summary jurisdiction by a school attendance officer, except by the direction of not less than two members of the education committee, or of any sub-committee appointed by the education committee for school attendance purposes (*n*).

Appearance.

142. Any person may appear in any proceeding taken to enforce the above-mentioned duties of parents or employers by any member of his family, or any other person authorised by him in that behalf (*o*).

Order instead of fine.

143. In any proceedings for an offence under a bye-law, the court may, instead of inflicting a fine, make an order that the child shall attend school, and that if it fails to do so the person on whom the order is made shall pay a fine not exceeding that to which he is liable for failing to comply with the bye-laws (*p*).

Power to search.

144. If it appear to any justice of the peace, on the complaint of a school attendance officer, that there is reasonable cause to believe that a child is employed in contravention of the rules with reference to the duties of employers in any place, whether a building or not, that justice may, by order under his hand, empower a school attendance officer to enter that place at any reasonable time within forty-eight hours from the date of the order and search it, and examine any person found there touching the employment of any child in the place. Any person who refuses admission to an officer so authorised, or who obstructs him in the discharge of his duty, is liable in respect of each offence, on summary conviction, to a fine not exceeding £20 (*q*).

Child must be produced.

145. Any justice of the peace may require by summons any parent or employer of a child required by a bye-law to attend school to produce the child before a court of summary jurisdiction,

(*k*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 39. Compare *Robinson* v. *Hill* (1909), 101 L. T. 573, a case on somewhat similar words in the Employment of Children Act, 1903 (3 Edw. 7, c. 45), s. 6 (3).
(*l*) See p. 64, *ante*.
(*m*) *Ibid.*, s. 39.
(*n*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 38; Education Act, 1902 (2 Edw. 7, c. 42), Sched. III. (3).
(*o*) Elementary Education Act, 1873 (36 & 37 Vict. c. 86), s. 24 (9); Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 37.
(*p*) Elementary Education Act, 1873 (36 & 37 Vict. c. 86), s. 24 (3).
(*q*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 29.

SECT. 4. Legal Proceedings.

and if any person fails, without reasonable excuse to the satisfaction of the court, to comply with the summons, he is liable in respect of each offence to a fine not exceeding £1 (*a*).

Evidence.

146. For the purpose of any proceedings for enforcing the above-mentioned duties of parents or employers, the following rules apply with respect to evidence:—

(1) A certificate purporting to be under the hand of the principal teacher of a public elementary school, stating that a child is or is not attending that school, or stating the particulars of the attendance of a child at that school, or stating that a child has been certified by one of His Majesty's inspectors to have reached a particular standard of education, is evidence of the facts stated in the certificate (*b*).

(2) Where a child is apparently of the age alleged, it lies on the defendant to prove that the child is not of that age (*c*).

(3) If a child is attending an elementary school which is not a public elementary school (*d*), it lies on the defendant to show that the school is efficient, and the court, in considering whether any elementary school is efficient, must have regard to the age of the child and the standard of education corresponding to that age prescribed by the Code (*e*).

(4) Where a local education authority are, by reason of the default of the managers or proprietor of an elementary school, unable to ascertain whether a child who is resident within the area of that authority and attends that school attends school in conformity with a bye-law made by that authority, it lies upon the defendant to show that the child has attended school in conformity with the bye-law (*f*).

Double proceedings.

147. Where any act or omission constitutes an offence or is otherwise the ground for any proceeding under the foregoing rules of the Education Acts relating to the duties of parents and employers and also under any bye-law made in pursuance of those rules or under any other provision of the Education Acts, or under any other Acts, proceedings may be taken under any of these provisions but may not be taken in respect of the same act or omission under more than one of these provisions (*g*).

(*a*) Elementary Education Act, 1873 (36 & 37 Vict. c. 86), s. 24 (4); Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 37.

(*b*) Elementary Education Act, 1873 (36 & 37 Vict. c. 86), s. 24 (5).

(*c*) *Ibid.*, s. 24 (6). For the power to obtain certificates of age and returns of births and deaths from the registrar or superintendent registrar under the Births and Deaths Registration Acts, 1836 to 1901, see Elementary Education Act, 1876 (39 & 40 Vict. c. 79), ss. 25, 26.

(*d*) As to public elementary schools, see note (*k*), p. 29, *ante*.

(*e*) Elementary Education Act, 1873 (36 & 37 Vict. c. 86), s. 24 (7).

(*f*) *Ibid.*, s. 24 (8). For the duty of managers of public elementary schools to afford returns or information to local education authorities regarding the attendance of children at their schools, see *ibid.*, s. 22, a duty which the control exercised by the authority over all public elementary schools (see p. 35, *ante*) has rendered obsolete in practice.

(*g*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 50; Elementary Education Act, 1880 (43 & 44 Vict. c. 23), s. 4 (altering the law as laid down in *Re Murphy* (1877), 2 Q. B. D. 397); and see, as to the construction of the Education Acts with other Acts in this respect, note (*h*), p. 61, *ante*.

SECT. 5.—*Children in Canal Boats.*

SECT. 5. Children in Canal Boats.

148. A child resident in a registered canal boat is deemed, for the purposes of the rules under the Education Acts, with reference to compulsory education and school attendance, to be resident in the place to which the boat is registered as belonging, and is subject to the bye-laws in force in that place. Residence.

But if the parent satisfies the local education authority of the area in which that place is that the child is actually attending school, and is under efficient instruction in accordance with those rules in another place, the authority are to grant the parent, free of charge, a certificate to that effect, and the child is then deemed to be resident in the latter place, and the bye-laws apply accordingly.

Any such certificate may be rescinded or varied by the authority granting it on the parent's application, or, if they are satisfied that the conditions on which it was granted are no longer fulfilled, without application (*h*).

The Board of Education are to report annually to Parliament upon the manner in which the education and school attendance of children living in canal boats are enforced (*i*). Report to Parliament.

SECT. 6.—*Children employed in Factories and Workshops* (*k*).

149. The Factory and Workshop Act, 1901 (*l*), imposes upon parents and employers special duties in respect of the education of children employed in factories or workshops as defined by the Act (*m*). "Parent" is defined in the Act to include guardian or person having the legal custody of, or control over, or having direct benefit from the wages of, a child (*n*), and the occupier of the factory or workshop is the employer of the child for the purposes of the rules which follow (*o*). "Child" in that Act means a person under the age of fourteen years who has not obtained the certificate of proficiency or attendance at school mentioned below (*p*). Definitions.

(*h*) Canal Boats Act, 1877 (40 & 41 Vict. c. 60), s. 6. As to the registration of canal boats and the registration authority, see *ibid.*, s. 7. As to the power given to canal and canal boat companies and owners to provide schools, see *ibid.*, s. 12. As to the power of the Board of Education to make regulations for certificates and pass-books, and for penalties for breach, see Canal Boats Act, 1884 (47 & 48 Vict. c. 75), ss. 2, 5.

(*i*) Canal Boats Act, 1884 (47 & 48 Vict. c. 75), s. 6.

(*k*) The law specially relating to factories and workshops is now contained in the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), which amended and consolidated previous legislation on the subject. This section deals only with those provisions of the Act which impose duties upon parents, employers and others in respect of education, and certain other provisions of the Act specially subsidiary thereto; for the effect of the rest of the Act, including various provisions dealing with definitions, legal proceedings, and other matters which are subsidiary both to the rules set out in this section and to the other rules contained in the Act, see title FACTORIES AND SHOPS.

(*l*) 1 Edw. 7, c. 22.

(*m*) As to these duties being additional to those imposed by the Education Acts, see p. 61, *ante;* and as to the prohibitions of double proceedings, see p. 66, *ante.*

(*n*) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 156 (1).

(*o*) For the meaning of "occupier," see title FACTORIES AND SHOPS.

(*p*) *Ibid.*, s. 156 (1); see p. 68, *post.*

SECT. 6. Children employed in Factories and Workshops.

Duty of parent.

150. A parent of a child employed in a factory or workshop must cause his child to attend some recognised efficient school (*q*) to be selected by him in accordance with the following conditions: The child, if employed in a morning or afternoon set (*r*), must, in every week during any part of which he is so employed, be caused to attend on each workday for at least one attendance, or, if employed on the alternate day system (*s*), must on each workday preceding each day of employment be caused to attend for at least two attendances (*t*). A child who has not in any week attended school for all the required attendances must not be employed in the following week until he has attended school for the deficient number of attendances (*a*).

An attendance must be an attendance as defined for the time being by the Secretary of State with the consent of the Board of Education (*b*), and must be between eight o'clock in the morning and six o'clock in the evening. The present definition requires the attendance of a child at a morning or afternoon meeting of a school during not less than two hours of instruction in secular subjects (*c*).

Exceptions.

151. A child need not attend school on Saturday or on any holiday or half-holiday allowed under the Factory and Workshop Act, 1901, in the factory or workshop in which the child is employed (*d*). The non-attendance of a child is also excused on every day on which he is certified by the teacher of the school to have been prevented from attending by sickness, or other unavoidable cause, and when the school is closed during the ordinary holidays or for any other temporary cause. And where there is not within the distance of two miles, measured according to the nearest road, from the residence of the child, a recognised efficient school which the child can attend, attendance at a school temporarily approved in writing by the inspector, although not a recognised efficient school, is to be deemed attendance at a recognised efficient school until such a school is established (*e*).

Exemptions.

152. A child of the age of thirteen years who has obtained from a person authorised by the Board of Education a certificate of having attained a prescribed standard of proficiency in reading, writing, and arithmetic, or a prescribed standard of previous due attendance at a certified efficient school (*f*), ceases to be a child for the

(*q*) For the meaning of "recognised efficient school," see p. 70, *post*.
(*r*) See note (*k*), p. 67, *ante*, and title FACTORIES AND SHOPS.
(*s*) *Ibid.*
(*t*) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 68 (1) (a) (b).
(*a*) *Ibid.*, s. 68 (2); compare *Stevenson* v. *Goldstraw*, *Stevenson* v. *Craig*, [1906] 2 K. B. 298, and Elementary Education (School Attendance) Act, 1893, Amendment Act, 1899 (62 & 63 Vict. c. 13), s. 1, last proviso.
(*b*) Factory and Shop Act, 1901 (1 Edw. 7, c. 22), s. 68 (1), (c).
(*c*) *Ibid.*, s. 161 (2). Order of Secretary of State, dated December 24th, 1878.
(*d*) 1 Edw. 7, c. 22, s. 35. See note (*k*), p. 67, and title FACTORIES AND SHOPS, for holidays in factories and workshops.
(*e*) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 68 (1) (i.) (ii.) (iii.); and for the meaning of "recognised efficient schools," see p. 70, *post*.
(*f*) Including for this purpose a certified day industrial school.

SECT. 6. Children employed in Factories and Workshops.

purposes of the rules as to the education of children employed in factories and workshops, and is deemed to be a young person and may be taken into full time employment, as is permitted by the Factory and Workshop Act, 1901 (*g*), in the case of a young person above the age of fourteen years (*h*). The standard of efficiency and due attendance are to be prescribed from time to time by the Secretary of State with the consent of the Board of Education, and have effect after a lapse of six months from their being published in the *London Gazette*(*i*). The standard of proficiency at present prescribed is the fifth standard of reading, writing, and arithmetic as fixed by the Code (*k*) in force for the time being, or any higher standard, and the standard of due attendance at present prescribed is 350 attendances after the child has attained the age of five years in not more than two schools during each year for five years, whether consecutive or not. Certificates are to be granted in accordance with regulations made by the Board of Education (*l*)

Duty of occupier.

153. The occupier of a factory or workshop under the Factory and Workshop Act, 1901 (*m*), in which a child is employed must, on every Monday in every week after the first week in which the child begins to work therein, or on some other day appointed for the purpose by an inspector (*n*), obtain from the teacher of the recognised efficient school attended by the child a certificate, according to prescribed forms and directions, respecting the attendance of the child at school. If the child is employed without such certificate the child is deemed to be employed contrary to the Factory and Workshop Act, 1901 (*o*). The occupier must keep every such certificate for two months after its date, if the child so long continues to be employed in his factory or workshop, and must produce it to an inspector when required during that period (*p*).

Penalties.

154. If the parent of any child employed in a factory or workshop as aforesaid neglects to cause that child to attend school in accordance with the above-mentioned conditions, he is liable to a fine not exceeding 20*s.* for each offence (*q*), and where any person is employed in a factory or workshop contrary to the Factory and Workshop Act, 1901, the occupier of the factory or workshop is liable to penalties as provided by the Act (*r*).

(*g*) 1 Edw. 7, c. 22; but not if such full-time employment be a breach of the bye-laws of the local education authority allowing total exemption only on other conditions (Elementary Education Act, 1880 (43 & 44 Vict., c. 23), s. 4; *Stevenson* v. *Goldstraw*, *Stevenson* v. *Craig*, [1906] 2 K. B. 298, and see note (*h*), p. 61, *ante*.

(*h*) For the conditions attaching to a "young person," see note (*k*), p. 67, *ante*, and title FACTORIES AND SHOPS.

(*i*) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 71.

(*k*) As to the Code, see p. 10, *ante*.

(*l*) Order of the Secretary of State, dated December 19th, 1900 (Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 161 (2)).

(*m*) 1 Edw. 7, c. 22. For the meaning of "occupier," see title FACTORIES AND SHOPS.

(*n*) As to the inspectors under the Act, see p. 70, *post*.

(*o*) 1 Edw. 7, c. 22.

(*p*) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 69.

(*q*) *Ibid.*, s. 138 (2).

(*r*) See note (*k*), p. 67; and title FACTORIES AND SHOPS.

SECT. 6. Children employed in Factories and Workshops.

The duties of parents and employers in respect of the education of children employed in factories or workshops as aforesaid are enforceable by inspectors appointed by the Secretary of State (*s*).

Deduction of school fees from wages.

155. The persons who manage a recognised efficient school attended by a child employed in a factory or workshop or some person authorised by them, may (if fees for children may be charged in that school) apply in writing to the occupier (*t*) of the factory or workshop to pay a weekly sum specified in the application, not exceeding 3*d.* and not exceeding one-twelfth of the wages of the child, and after that application the occupier, so long as he employs the child, is liable to pay to the applicants, while the child attends their school, that weekly sum. The sum may be recovered as a debt, and the occupier may deduct the sum so paid by him from the wages payable for the services of the child (*u*).

Recognised efficient schools.

156. A recognised efficient school is any certified efficient school (*v*), or any school which the Board of Education have not refused to take into consideration under the Elementary Education Act, 1870 (*w*), as a school giving efficient elementary education to, and suitable for, the children of a school district, and which is recognised by an inspector under the Factory and Workshop Act, 1901, as giving efficient elementary education (*x*). Every inspector under that Act must immediately report to the Board of Education every school so recognised by him (*y*), and also schools which he has approved temporarily (*z*) pending the establishment of a recognised efficient school (*a*). The Board must, by the publication of lists or notices, and otherwise as they think expedient, provide for giving to all persons interested, information of the schools in each school district which are recognised efficient schools (*b*).

Part V.—Reformatory and Industrial Schools.

SECT. 1.—*In General.*

157. Reformatory schools and industrial schools are schools for the compulsory detention and industrial training of children who have committed some offence. An industrial school also receives, for similar purposes, children who, though not offenders, are deemed by a court on certain grounds to require removal from their home

(*s*) See note (*a*), p. 54; and title FACTORIES AND SHOPS. S. 134 of the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), contains provisions respecting the proof of children's age through registrars of births and deaths which are substantially the same as those mentioned at p. 66, *ante*.
(*t*) See p. 67, *ante*.
(*u*) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 70.
(*v*) See p. 51, *ante*.
(*w*) 33 & 34 Vict. c. 75, ss. 8 (now repealed), 72.
(*x*) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 72.
(*y*) *Ibid.*, s. 72 (2).
(*z*) See p. 68, *ante*.
(*a*) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 68 (1) (iii.).
(*b*) *Ibid.*, s. 68 (3).

or other surroundings. In either kind of school a child is lodged, clothed and fed, as well as taught (*c*). These schools may be provided either voluntarily or by local authorities (*d*). The central authority for their supervision and control is the Home Office (*e*).

Class of children received.

158. Reformatory schools receive youthful offenders who have been convicted of certain offences, and who (in the opinion of the court before which they are charged) are between twelve and sixteen years of age (*f*). Industrial schools receive children apparently under the age of fourteen who are sent thereto by a court of summary jurisdiction as having been found begging, wandering or destitute, or living in criminal or immoral surroundings, children apparently under the age of twelve who are charged with certain offences, children under fourteen similarly charged but for special reasons not sent to a reformatory school, and children proved

(*c*) Children Act, 1908 (8 Edw. 7, c. 67), s. 44 (1). Day industrial schools, which are distinct from reformatory and industrial schools (s. 77 (3)), do not provide lodging (see p. 79, *post*). These pages, for the most part, deal only with the maintenance and conduct of reformatory and industrial schools; as to the power to commit children to such schools, see titles CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 430 *et seq.*; INFANTS AND CHILDREN; MAGISTRATES. Reformatory and industrial schools were first regulated by general statutes in 1854 (17 & 18 Vict. c. 86) and in 1856 (19 & 20 Vict. c. 109), which, with other enactments, were repealed and consolidated by the Reformatory Schools Act, 1866 (29 & 30 Vict. c. 117), and the Industrial Schools Act, 1866 (29 & 30 Vict. c. 118); other statutes and statutory orders followed. All such Acts were repealed by the Children Act, 1908 (8 Edw. 7, c. 67), of which Part IV. (ss. 44—93) took their place. Day industrial schools are separately treated therein (ss. 77—83; see p. 79, *post*), otherwise reformatory and industrial schools are largely co-ordinated under the title of "certified schools." These schools include reformatory and industrial ships; but the Home Secretary allows no grant (see circular of 19th July, 1893) until the inmates are eleven years old. See also Statutory Rules and Orders, 1909, No. 328.

(*d*) As to the functions of local authorities, see p. 79, *post*. As a matter of history local authorities derive their powers in respect of reformatory and industrial schools as prison authorities or as successors, under the Local Government Act, 1888 (51 & 52 Vict. c. 41), of such authorities, that Act conferring upon or reserving to county councils, county borough councils, and quarter sessions borough councils of a certain population the functions of prison authorities under previous Acts (see Reformatory Schools Act, 1866 (29 & 30 Vict. c. 117), ss. 3, 28—30; Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), ss. 4, 12, 50; Reformatory and Industrial Schools Acts Amendment Act, 1872 (35 & 36 Vict. c. 21), ss. 4, 7, 8; all of which are now repealed), and partly as local education authorities under the Education Act, 1902 (2 Edw. 7, c. 42), that Act (s. 5) having conferred upon such authorities the functions of school boards with reference to industrial schools (see Elementary Education Acts, 1870 (33 & 34 Vict. c. 75), s. 28; 1873 (36 & 37 Vict. c. 86), s. 14; and 1876 (39 & 40 Vict. c. 79), s. 15, all of which are now repealed). All such functions are now exercised by local authorities under the Children Act, 1908 (8 Edw. 7, c. 67), Part IV. of which confers upon county councils and county borough councils, in their capacity as such, functions with reference to reformatory schools, and upon local education authorities, in their capacity as such, functions with reference to industrial schools, see p. 78, *post*. As to the general powers of local education authorities, see p. 15, *ante*.

(*e*) See p. 72, *post*.

(*f*) Children Act, 1908 (8 Edw. 7, c. 67), s. 57; as to the offences for which a child may be sent to a reformatory school, see title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 422. A youthful offender under sixteen, if sentenced and pardoned on condition of entering some charitable reformatory institution, may be sent to a certified reformatory school with the managers' consent (s. 84).

SECT. 1. In General.

uncontrollable at home or refractory in poor law schools or irregular in school attendance (*g*).

Mode of detention.

159. Youthful offenders and children sent to reformatory and industrial schools are committed under a detention order. This order may be made to take effect either at once, or (regard being had to the age or health of the youthful offender or child) at a specified future date (*h*) It may specify the school (*i*), and must specify the period of detention (*k*).

Religious persuasion.

160. The court, in determining the school to which the youthful offender or child is to be sent, must try to ascertain the religious persuasion to which it belongs, and, where practicable, the detention order must specify the persuasion, and a school be selected which is conducted in accordance with that persuasion (*l*).

Period of detention.

161. Youthful offenders may be detained in reformatory schools for a period not less than three nor more than five years; but they may not be detained beyond the time when they will, in the opinion of the court, attain the age of nineteen (*m*). Children may be detained in industrial schools for such time as the court thinks proper for their teaching and training, but not beyond the time when they will, in the opinion of the court, attain the age of sixteen years (*n*).

SECT. 2.—*Central Authority.*

Secretary of State's power.

162. The central authority is the Secretary of State (*o*). Every reformatory or industrial school requires his certificate of fitness and must be inspected at least once a year by his inspectors (*p*). The Secretary of State, if dissatisfied with the condition, rules, management, or superintendence of a certified school, may (six months after notice to the managers) withdraw the certificate or may

(*g*) Children Act, 1908 (8 Edw. 7, c. 67), s. 58. As to irregular school attendance, see *ibid.*, s. 58 (6), and p. 57, *ante*, regarding school attendance orders See also titles CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 422; INFANTS AND CHILDREN; MAGISTRATES.

(*h*) *Ibid.*, s. 61. As to custody meanwhile, see *ibid.*, s. 63; for conveyance to the school, see *ibid.*, s. 64.

(*i*) The school may be situate outside the court's jurisdiction. If a school cannot be specified in the order, it shall be such as a justice having jurisdiction in the place where the court which made the order sat shall indorse thereon (*ibid.*, s. 62). In a proper case the order may specify a certified school where special training is provided for the mentally or physically defective (*ibid.*, s. 62 (2)).

(*k*) *Ibid.*, s. 65.

(*l*) *Ibid.*, s. 66. If a school be selected which is not conducted in accordance with the religious persuasion to which the offender belongs, application may within thirty days of his arrival (s. 66 (3) (i.)) be made (by the parent, legal guardian, nearest adult relative, or person entitled to custody of him (s. 66 (3)) to the petty sessional court where the order was made (s. 66 (3) (a)), or otherwise to the Secretary of State (s. 66 (3) (b)), for his removal to a certified school of the ascertained religion. Upon proof of his religion and of the willingness of the school named in the application to receive him (s. 66 (3) (ii.)) the application must be granted; see p. 75, *post*.

(*m*) *Ibid.*, s. 65 (a). For a possible exception to this time limit, see p. 76, *post*; for discharge, see p. 76, *post*; for supervision, p. 77, *post*.

(*n*) *Ibid.*, s. 65 (b). For possible exception, see p. 76, *post*.

(*o*) In practice this authority is usually exercised by the Secretary of State for the Home Department.

(*p*) Children Act, 1908 (8 Edw. 7, c. 67), s. 46 (3). For appointment and remuneration of inspectors and assistant inspectors, see *ibid.*, s. 46 (1), (2).

prohibit further admission to the school (*q*). He may also at any time discharge an inmate of a certified school (*r*). He also fixes, with the approval of the Treasury, the amounts and conditions of the grants out of moneys provided by Parliament towards the school expenses (*s*).

SECT. 3.—*Powers and Duties of Local Authorities and Managers.*

Local authorities and managers.

163. The local authority for providing for the reception and maintenance of a youthful offender in a reformatory school are the council of the county or county borough in which he resides (*a*). The local authority providing for the reception and maintenance of a child in an industrial school are the local education authority for the district in which he resides (*b*). There are special provisions defining residence (*c*).

The managers of a school are the persons who for the time being have the management or control of it (*d*).

Duty of local authority.

164. It is the duty of the local authority, subject to certain exceptions, to provide, in suitable certified schools, for the reception and maintenance of the youthful offenders or children ordered to be sent thereto (*e*).

(*q*) Children Act, 1908 (8 Edw. 7, c. 67), s. 47.

(*r*) For discharge, transfer etc. of inmates, see p. 76, *post*.

(*s*) Children Act, 1908 (8 Edw. 7, c. 67), s. 73; see p. 77, *post*.

(*a*) *Ibid.*, s. 74 (1) (7). The local authority as regards reformatory schools for offenders committed by a petty sessional court acting in and for the City of London is the Common Council; see *ibid.*, s. 74 (18).

(*b*) *Ibid.*, s. 74 (2), (7). An industrial school established before 1st April, 1909, by a county council acting as such, is now vested in the county council acting as a local education authority (*ibid.*, ss. 74 (17), 134 (2)). For local education authorities, see p. 17, *ante*. The necessary adjustments must be made between the county council and the local education authorities within the county, including the county council itself; and for this purpose the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 68, applies.

(*c*) Unless otherwise proved, the place of residence is presumed to be the place where the offence or other circumstances occurred, by reason whereof the detention order was made (Children Act, 1908 (8 Edw. 7, c. 67), s. 74 (3)). A court of assize or of quarter sessions, making a detention order, must remit to the court of summary jurisdiction which sent the case for trial the determination of the place of residence (s. 74 (4)). A local authority aggrieved by a decision as to residence may, within three months of order made, apply to the petty sessional court acting in and for the place for which the court which made the order or determined the place of residence acted. On proof that the residence was in the area of another local authority, the court may make the latter liable, and order them to repay the expenses already incurred. Until liability is thus transferred, the original local authority remain liable. There is an appeal to quarter sessions (s. 74 (7)).

(*d*) *Ibid.*, s. 44 (2).

(*e*) *Ibid.*, s. 74 (1), (2). This obligation is not binding in the case of a child sent to an industrial school:—(i.) at the desire of parent or guardian as an uncontrollable child; or (ii.) at the instance of poor law guardians or district poor law school managers as a refractory child, or as the child of parents either of whom has been convicted of an offence punishable with penal servitude or imprisonment (in this case of exception the guardians or managers must contribute towards the child's maintenance such sums as may be agreed between them and the managers of the industrial school, or in default of agreement, as may be fixed by the Secretary of State (s. 74 (11))); or (iii.) being a child without settled abode and habitually wandering through various local education authorities' districts; or (iv.) being a child in respect of whose maintenance no grant is made by the Secretary of State. In these four cases the local education authority

SECT. 3. Powers and Duties of Local Authorities and Managers.

To carry out this duty, the local authority may either contract with the managers of any certified school for the reception and maintenance therein of the youthful offenders or children for whom they must provide (*f*), or, with the approval of the Secretary of State (*g*), they may (singly, or in the case of local education authorities, jointly with other such authorities (*h*)) undertake or contribute towards the establishment, alteration or management of a certified school, or the purchase of land for the use or site of a school (*i*).

A local authority liable to maintain an inmate of a certified school, or having already voluntarily contributed towards his maintenance, may contribute towards his ultimate disposal (*j*).

Liability of managers.

165. The managers may refuse to receive any youthful offender or child proposed to be sent to them. But, having once accepted him, they are deemed to have undertaken to teach, train, lodge, clothe, and feed him during the period of detention or until withdrawal or resignation of the certificate or the discontinuance of the grant made by the Secretary of State (*k*).

Conduct of schools.

166. Every reformatory and industrial school must obtain from the Secretary of State a certificate of its fitness to receive youthful offenders and children (*l*), and must be so conducted as to satisfy the Secretary of State (*m*).

Rules.

The managers may make (and, if required by the Secretary of State, must make) rules for the management and discipline of the school. These rules are subject to the approval of the Secretary of State (*n*).

concerned may, but need not, contribute towards or provide for the child's maintenance at such school (*ibid.*, s. 74 (5)). A petty sessional court can make no order for detention in an industrial school unless the local authority concerned have had an opportunity of being heard (*ibid.*, s. 74 (6)).

(*f*) Children Act, 1908 (8 Edw. 7, c. 67), s. 74 (8) (a).

(*g*) Particulars and a plan must be forwarded to him as required (*ibid.*, s. 74 (16)).

(*h*) They may provide by agreement (*ibid.*, s. 74 (15)) for a joint body of managers and for apportionment of contributions. Audit is as provided by the Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 6; see p. 52, *ante*.

(*i*) Children Act, 1908 (8 Edw. 7, c. 67), s. 74 (8) (b). As to expenses and loans for this purpose, see p. 79, *post*. When managers were given powers of licensing out children after one month (see Industrial Schools Act, 1866 (29 & 30 Vict. c. 118), s. 27; Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 14: both sections are now repealed) local authorities, to avoid treating short-term children alongside children of different character detained for longer terms, established special schools called truant industrial schools. These schools are subject to the law which governs ordinary industrial schools, and have no statutory distinction. Model rules adapted to their needs were issued in 1897, B. 7653 (5).

(*j*) Children Act, 1908, (8 Edw. 7, c. 67), s. 74 (9). As to ultimate disposal, see p. 77, *post*.

(*k*) *Ibid.*, s. 52.

(*l*) Upon application by the managers, an inspection is held; if the inspector's report is satisfactory, the Secretary of State may certify the school (*ibid.*, s. 45); see for procedure, Model Rules, issued 1897 (B. 7653), note (2). Auxiliary homes are similarly certified (Children Act, 1908 (8 Edw. 7, c. 67), s. 51). For presumption of certification, see *ibid.*, s. 88 (7); for proof thereof, see *ibid.*, s. 88 (1).

(*m*) Otherwise he may withdraw the certificate; see p. 72, *ante*.

(*n*) Children Act, 1908 (8 Edw. 7, c. 67), s. 54; see Model Rules issued in July, 1897 (B. 7653); and as to the application of rules under previous (repealed) Acts, see *ibid.*, s. 134 (3).

167. Substantial addition to, or alteration of, the buildings of a certified school must not be made without the written approval of the Secretary of State (*o*). Alterations to buildings.

168. The managers may make, or join with other managers in making, provision for superannuation allowances to school officers (*p*).

169. Where the religious persuasion to which a youthful offender or child appears to belong is specified in the detention order (*q*), he may be visited by a minister of that persuasion, for religious assistance and instruction, on days, at times, and on conditions fixed by the Secretary of State (*r*). Religious ministrations.

170. Managers may (upon notice (*s*)) resign the certificate of the school. Upon the loss of its certificate (whether withdrawn by the Home Secretary (*t*) or resigned by the managers), the school ceases to be a certified school (*a*). After notice of withdrawal or resignation of the certificate (*b*), nobody can be received into the school (*c*); existing inmates must be either discharged or transferred to some other certified school (*d*). Closing of schools.

171. If a youthful offender detained in a reformatory school is guilty of a serious and wilful breach of its rules or of inciting other inmates thereto (*e*), or if he escapes from the school (*f*), he is liable on summary conviction to an extra detention of not more than six months, or, if over sixteen, to imprisonment with or without hard labour for not more than three months. Control of children.

If a child of the age of twelve years or upwards detained in an industrial school is guilty of a serious and wilful breach of its rules or of inciting other inmates thereto (*g*), or is found exercising an evil influence over the other children in the school (*h*), or if he escapes from the school (*i*), he is liable to be sent to a certified reformatory school.

No warrant is needed for apprehending anyone who escapes (*k*). The expense of bringing him back must be borne by the managers of the school from which he escaped (*l*).

(*o*) Children Act, 1908 (8 Edw. 7, c. 67), s. 55.
(*p*) *Ibid.*, s. 56 (1). The expenses so incurred are part of the expenses of management; see p. 77, *post*.
(*q*) See p. 72, *ante*.
(*r*) Children Act, 1908 (8 Edw. 7, c. 67), s. 66 (2).
(*s*) Six months' notice in general, or one month's notice in the case of representatives of a deceased sole manager (*ibid.*, s. 48).
(*t*) See p. 72, *ante*.
(*a*) Children Act, 1908 (8 Edw. 7, c. 67), ss. 47, 48.
(*b*) See *ibid.*, s. 87 (3), (4).
(*c*) *Ibid.*, s. 49. As to the managers' liabilities between the date of notice and that of loss of certificate, see ss. 49, 52.
(*d*) As to discharge and transfer generally, see p. 76, *post*.
(*e*) *Ibid.*, s. 71 (1).
(*f*) *Ibid.*, s. 72 (1).
(*g*) *Ibid.*, s. 71 (2), upon summary conviction.
(*h*) *Ibid.*, s. 69 (2) (c), by order of the Secretary of State.
(*i*) *Ibid.*, s. 72 (2), upon summary conviction. A child under twelve years, escaping from an industrial school, is, upon apprehension and summary conviction, merely brought back to the school (s. 72 (2)).
(*k*) *Ibid.*, s. 72 (1), (2).
(*l*) *Ibid.*, s. 72 (4).

SECT. 3. Powers and Duties of Local Authorities and Managers.

A youthful offender thus sentenced to imprisonment must be brought back from the prison to a certified reformatory school to finish his unexpired term of detention (*m*).

Punishments inflicted in these cases override the provisions which otherwise limit the period of detention (*n*).

Persons assisting escape.

172. Any person who knowingly assists, or directly or indirectly induces, an offender or child to escape from school or from any person with whom he is placed out on licence, and also any person who knowingly harbours or conceals any escaped offender or child, or prevents him from returning to school or to any person with whom he is placed out on licence, or who knowingly assists in so doing, is liable, upon summary conviction, to imprisonment not exceeding two months or to a fine not exceeding £20 (*o*).

SECT. 4.—*Discharge, Transfer, Licence, Supervision etc.*

Discharge.

173. The Secretary of State may discharge any inmate of a certified school absolutely or conditionally (*p*).

Transfer.

174. The Secretary of State may transfer an inmate of a certified reformatory school to another such school, and, if the inmate be under fourteen, to a certified industrial school (*q*). He may transfer an inmate of a certified industrial school to another such school (*r*).

Transfer may be from one part of the United Kingdom to another (*s*). It must not increase the whole period of detention (*a*).

Maintenance in case of transfer.

A local authority responsible (*b*) for the maintenance of an inmate of a certified school remains responsible even if he be transferred from a reformatory to an industrial school, or be transferred or ordered by a court to be sent from an industrial to a reformatory school (*c*).

Placing out on licence.

175. The managers of a certified school may, subject to prescribed conditions, place inmates out on licence with any trustworthy and respectable person named in the licence and willing to receive and take charge of them (*d*).

(*m*) Children Act, 1908 (8 Edw. 7, c. 67), s. 71 (1). The expense of bringing him back falls on the managers of the school in which the offence was committed.

(*n*) *Ibid.*, ss. 71 (3), 72 (5); see p. 72, *ante*.

(*o*) *Ibid.*, s. 72 (6).

(*p*) *Ibid.*, s. 69 (1). Failure to return upon revocation of a conditional discharge is equivalent to an escape; see p. 75, *ante*.

(*q*) *Ibid.*, s. 69 (2) (a), (b).

(*r*) *Ibid.*, s. 69 (2) (a).

(*s*) *Ibid.*, s. 69 (3), if the central authority for that other part consent.

(*a*) *Ibid.*, s. 69 (2).

(*b*) Under the Children Act, 1908 (8 Edw. 7, c. 67), s. 74; see p. 73, *ante*.

(*c*) *Ibid.*, s. 74 (10). But before transference is ordered, the local authority concerned shall have notice and an opportunity of making representations to the Secretary of State.

(*d*) *Ibid.*, s. 67 (1). The consent of the Secretary of State (or, where children are sent to an industrial school at the instance of a local education authority, the consent of that authority) is required. After eighteen months' detention no consent is necessary. A child under fourteen, if licensed out, must attend as day scholar some named certified efficient school (*ibid.*, s. 67 (1)). Children

The licence may be revoked by order in writing (*e*). A conditional licence may be forfeited by breach of the condition (*f*). The time during which a youthful offender or child is absent on licence (but not the time after the licence is withdrawn) counts as part of the period of detention (*g*).

Supervision after detention.

176. At the end of the detention period, reformatory school managers exercise supervision until the youthful offender attains nineteen, industrial school managers until the child attains eighteen (*h*). During this supervision a parent's rights and powers are subordinate to the managers' control (*i*); but the Secretary of State may, by order, at any time end the supervision (*k*).

Managers may grant a licence to a person supervised (*l*). They may revoke it, and may recall him if they think recall necessary for his protection (*m*). A person recalled cannot be detained more than three months, and must be placed out again on licence as soon as possible (*n*).

Apprenticeship and emigration.

177. If a youthful offender or child, detained in a certified school, placed out on licence or kept under supervision, conducts himself well, the managers with his consent may apprentice him to, or dispose of him in, any trade, calling or service (including naval and military service), or dispose of him by emigration, although his period of detention or supervision is unexpired (*o*).

SECT. 5.—*Expenses of Schools.*

Grants by Secretary of State.

178. Out of moneys provided by Parliament sums, in amounts and upon conditions recommended by the Secretary of State with the approval of the Treasury, are payable towards the expenses of inmates of certified schools. These expenses include the cost of emigration and of transference from school to school (*p*).

under eight years of age sent to an industrial school may be boarded out with any suitable person until ten years old, or longer with the consent of the Secretary of State (*ibid.*, s. 53).

(*e*) Children Act, 1908 (8 Edw. 7, c. 67), s. 67 (3); and see s. 68 (4).

(*f*) *Ibid.*, s. 67 (2).

(*g*) *Ibid.*, s. 67 (5). Escape, or refusal to return after the licence is withdrawn, is punishable like escape from the school itself (*ibid.*, s. 67 (4); see p. 75, *ante*). A parent or guardian harbouring a youthful offender or child who fails to return to school may be summoned to produce him on a specified day, and in default is liable to a fine not exceeding £1 on summary conviction (*ibid.*, s. 67 (6)).

(*h*) *Ibid.*, s. 68 (1), (2). This provision does not apply to children sent to industrial schools to enforce a school attendance order; see p 57, *ante*.

(*i*) *Ibid.*, s. 68 (6).

(*k*) *Ibid.*, s. 68 (5).

(*l*) *Ibid.*, s. 68 (3). The manner of granting a licence is as above stated.

(*m*) Children Act, 1908 (8 Edw. 7, c. 67), s. 68 (3) (a). They must notify the chief inspector of reformatory and industrial schools immediately upon recall, stating the reasons, and again when the person is placed out afresh (*ibid.*, s. 68 (3) (b), (c)).

(*n*) *Ibid.*, s. 68 (3) (c).

(*o*) *Ibid.*, s. 70. For emigration, and in any case except after twelve months' detention, the consent of the Secretary of State is necessary.

(*p*) *Ibid.*, s. 73. The grant must not exceed 2*s.* per week for a child detained in an industrial school on the application of his parent or guardian.

SECT. 5. Expenses of Schools.

Parents' contributions.

179. Parents of, or other persons liable for the maintenance of (*q*), inmates of certified schools must, if able, contribute such sum as an Order in Council may declare to be approximately the average cost of maintenance in schools of that class in that locality (*r*).

Such weekly sum (not exceeding the declared average cost) may be fixed as, having regard to the ability of the person, seems reasonable to be paid during the whole or part of the detention (*s*). The court making a detention order (unless insufficiently informed) must, and a petty sessional court having jurisdiction where the parent or other person resides (upon complaint by the Chief Inspector of Reformatory and Industrial Schools, on whose behalf a constable, if required, must take proceedings (*t*)) may, make an order upon the parent or other person for payment accordingly (*a*).

The court making the detention order, if a court of assize or of quarter sessions, may remit the making of such order to the court of summary jurisdiction where the case was committed for trial (*b*).

The order may specify the time of payment, or may direct payment till further order. It is enforceable as an order of affiliation (*c*). It may be varied by any court which would have had power to make the order (*d*). Payment may be remitted wholly or partly at the discretion of the Secretary of State (*e*).

A person on whom an order is made must give notice of any change of address (*f*). Any income or pension payable to him may be attached, after the person by whom such income or pension is payable has had an opportunity of being heard (*g*).

Sums so contributed by parents or other persons must be paid into the Exchequer; but any excess of such sums over Treasury grants in respect of any child in an industrial school must be paid not to the Exchequer, but to the school managers (*h*).

Rates.

180. The expenses incurred by a local authority for reformatory schools are defrayed as expenses for general county purposes in the

(*q*) See Children Act, 1908 (8 Edw. 7, c. 67), s. 75 (10).

(*r*) *Ibid.*, s. 75 (1). This sum was in 1909 (Statutory Rules and Orders, 1909, 344) declared to be:—For reformatory schools in England and Wales, per week—town schools and ships, boys 8*s.*, girls 7*s.*; county schools, 7*s.* For industrial schools—ship schools, 7*s.* 6*d.*; other schools, boys 7*s.*, girls 6*s.* 6*d.*; schools in the county of London, 8*s.*

(*s*) Children Act, 1908 (8 Edw. 7, c. 67), s. 75 (2).

(*t*) *Ibid.*, s. 75 (9).

(*a*) *Ibid.*, s. 75 (2) (a), (b).

(*b*) *Ibid.*, s. 75 (2).

(*c*) *Ibid.*, s. 75 (3). For affiliation orders, see title BASTARDY, Vol. II., pp. 443 *et seq.*

(*d*) Upon fourteen days' notice of application to the Chief Inspector or to the person on whom the order is made, as the case may be (Children Act, 1908 (8 Edw. 7, c. 67), s. 75 (4)). A person thus ordered to pay, if not summoned to the court which made the order, may apply for modification or rescission of the order in certain cases (s. 75 (5)).

(*e*) *Ibid.*, s. 75 (8).

(*f*) *Ibid.*, s. 75 (6). Otherwise he is liable to a fine not exceeding £2.

(*g*) *Ibid.*, s. 75 (11).

(*h*) *Ibid.*, s. 75 (7).

case of county councils, and out of the borough fund or borough rate in the case of a county borough council (*i*).

For industrial schools they are defrayed by the local education authority, as expenses incurred for the purposes of elementary education (*k*).

Loans.

181. For the purposes of defraying or contributing towards the expenses of establishing, building, altering, enlarging or rebuilding a certified school, or for the purchase of land for the use or site of a school, a local authority may borrow money, the maximum period of repayment being sixty years (*l*).

Acquisition of land.

A local authority may acquire land for the purposes of reformatory and industrial schools (*m*).

Cost of conveyance and clothing.

182. The cost of conveying a youthful offender to a reformatory school and of clothing him properly for admission is defrayed out of moneys provided by Parliament (*n*).

The cost of conveying a child to an industrial school is defrayed by (and is deemed part of the current expenses of) the police authority which conveys him (*o*). The cost of conveying to and from school, and of sending out on licence or of bringing back after withdrawal of licence, a child sent to an industrial school at the instance of a local education authority may be borne by that authority (*p*).

SECT. 6.—*Day Industrial Schools.*

Definition.

183. Day industrial schools are schools in which industrial training, elementary education, and one or more meals a day are provided, but not lodging (*q*).

Establishment.

They may be established where the Secretary of State is satisfied that they are necessary or expedient owing to the circumstances of any class of population in the area of a local education authority (*r*).

In regard to establishment, certification, and inspection, they are

(*i*) Children Act, 1908 (8 Edw. 7, c. 67), s. 74 (13) (a).

(*k*) *Ibid.*, s. 74 (13) (b); see p. 47, *ante*.

(*l*) *Ibid.*, s. 74 (14). The borrowing for reformatory schools is under the Local Government Act, 1888 (51 & 52 Vict. c. 41), in the case of county councils; and under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), in the case of county borough councils; see title LOCAL GOVERNMENT. For industrial schools it is under the Education Acts, 1870 to 1909; see p. 50, *ante*.

(*m*) Children Act, 1908 (8 Edw. 7, c. 67), s. 74 (12); as to reformatory schools under the Local Government Act, 1888 (51 & 52 Vict. c. 41), in the case of county councils; and as for the purposes of the Public Health Acts in the case of county borough councils, see title LOCAL GOVERNMENT. For industrial schools, as for the purposes of the Education Acts, 1870 to 1907, see p. 26, *ante*. As to a county council appropriating for other purposes, such as reformatory schools, land acquired for other educational purposes, see p. 21, *ante*.

(*n*) Children Act, 1908 (8 Edw. 7, c. 67), s. 76 (1).

(*o*) *Ibid.*, s. 76 (2); as to police authorities, see title POLICE.

(*p*) Children Act, 1908 (8 Edw. 7, c. 67), s. 76.

(*q*) *Ibid.*, s. 77 (1). These schools were first instituted under the Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 16.

(*r*) Children Act, 1908 (8 Edw. 7, c. 67), s. 77 (1). If the circumstances change, the school may be closed by withdrawal of its certificate (s. 77 (4)).

SECT. 6. Day Industrial Schools.

treated like other industrial schools (*s*). In other matters they are subject to the law of industrial schools, so far as it is applicable and not otherwise modified by Order in Council (*t*).

Class of children received.

184. Any child liable to be sent to a certified industrial school (*a*) may, if the court before which the child is brought thinks expedient, be sent to a certified day industrial school (*b*) within two and a half miles of the child's residence (*c*).

The managers of a certified day industrial school may receive a child under an attendance order (*d*), or without an order of court upon the request of a local education authority, and of the parent, guardian, or other person legally liable to maintain the child, if such parent or other person undertakes to pay towards the child's expenses such sums as a Secretary of State may authorise (*e*).

Period of detention.

185. The period of detention in such schools is such time as to the court may seem proper for the teaching and training of the child. It must not extend beyond the age of fourteen years (*f*).

A child may be exempted from attendance on condition that he attends, as a day scholar, some named school which is a certified efficient school (*g*).

Powers of local education authorities.

186. Local education authorities have the same powers in relation to certified day industrial schools as in relation to certified industrial schools. They are not obliged to provide for the reception and maintenance of children in certified day industrial schools (*h*).

Expenses of day industrial schools.

187. The law governing the expenses of day industrial schools is the same as that which governs those of other industrial schools (*i*), with the following qualifications :—

Out of moneys provided by Parliament sums, in amounts and

(*s*) Children Act, 1908 (8 Edw. 7, c. 67), s. 77 (1). A day industrial school cannot at the same time be a reformatory or an industrial school (s. 77 (3)). When certified, it is deemed to be a certified efficient school within the meaning of the Elementary Education Act, 1876 (39 & 40 Vict. c. 79)), *ibid.*, s. 77 (2); and see p. 57, *ante*).

(*t*) Children Act, 1908 (8 Edw. 7, c. 67), s. 83; see Statutory Rules and Orders, 1909, 342 (England).

(*a*) See p. 71, *ante;* and titles INFANTS AND CHILDREN; MAGISTRATES.

(*b*) Children Act, 1908 (8 Edw. 7, c. 67), s. 78 (1).

(*c*) *Ibid.*, s. 78 (3); Statutory Rules and Orders, 1909, 342, III. The provisions as to transference, both in general and to a school of the child's religious persuasion, depend on the existence within the two and a half miles' limit of a school to which the child can be transferred, and on the willingness of such school to receive him (*ibid.*, 342, V. and VII.).

(*d*) As to attendance orders, see p. 51, *ante*.

(*e*) Children Act, 1908 (8 Edw. 7, c. 67), s. 79. The obligations of the managers (Children Act, 1908 (8 Edw. 7, c. 67), ss. 49 and 52) are suspended if and while the parent fails in his undertaking (Statutory Rules and Orders, 1909, 342, I. and II.). The sum is to be an agreed one—not more than 2*s.* a week in London, Leeds, and Bristol, and 1*s.* 9*d.* elsewhere in England (*ibid.*, 328, I.). For forms of undertaking, see *ibid.*, 342, Scheds. A and B.

(*f*) *Ibid.*, 342, IV. Attendance will not be reckoned unless at least three hours' secular instruction be included (see *ibid.*, 328, I.).

(*g*) *Ibid.*, 342, VI. As to certified efficient schools, see p. 57, *ante*.

(*h*) Children Act, 1908 (8 Edw. 7, c. 67), s. 81.

(*i*) *Ibid.*, s. 80; see p. 77, *ante*.

upon conditions (*k*) recommended by the Secretary of State with the approval of the Treasury, are payable towards the expenses of day industrial schools; but day industrial schools can earn no grant unless they give education of such efficiency as would entitle them to such grant if they were public elementary schools (*l*). SECT. 6. **Day Industrial Schools.**

A court ordering a child to be sent to a certified day industrial school must also order the parent, or other person liable for the child's maintenance, to contribute to the child's expense a sum named. This sum is not to exceed the sum declared by Order in Council to represent approximately the average daily cost of a child in such schools in that locality (*m*). Contributions by parent.

The order is enforceable as an order of affiliation (*n*). The local education authority must obtain and enforce it, but has power in its discretion to remit the sum wholly or partly (*o*). If the parent or other person cannot pay he must apply to the poor law guardians, who, if satisfied of his inability to pay all or part, must give him relief accordingly (*p*). Enforcement of order.

Part VI.—Powers and Duties of Poor Law Authorities.

SECT. 1.—*In General.*

188. The central authority for poor law education is the Local Government Board. The local authority are the guardians, or a school district board combining several parishes or unions. Guardians may either provide schools for the children under their charge or utilise the system of public elementary schools or schools provided by school district boards or schools voluntarily provided and known as certified schools. A school district board may likewise provide schools of their own for children of their district. Poor law authorities.

SECT. 2.—*The Local Government Board.*

189. In general, the education of children under the poor law is poor relief, and is subject to the direction and supervision of the Local Government Board (*q*). The Board may make orders and Orders of Local Government Board.

(*k*) Such conditions must be laid before Parliament in the same manner as minutes of the Board of Education relating to the annual parliamentary grant (Children Act, 1908 (8 Edw. 7, c. 67), s. 80 (b); see p. 11, *ante*).

(*l*) *Ibid.*, s. 80 (a); see p. 10, *ante*.

(*m*) *Ibid.*, s. 82 (1). The Statutory Rules and Orders, 1909, fix it for England (see 342, XI.) at 2*s.* a week for London, Leeds, and Bristol, and at 1*s.* 9*d.* for other towns.

(*n*) Children Act, 1908 (8 Edw. 7, c. 67), s. 75 (3); see title BASTARDY, Vol. II., pp. 443 *et seq.*

(*o*) Children Act, 1908 (8 Edw. 7, c. 67), s. 82 (2); Statutory Rules and Orders, 1909, 342, XII. Sums paid under the order must be paid over to the local education authority in aid of their elementary education expenses under the Education Acts, 1870 to 1907. The order is binding on whomsoever made, may be varied, and may specify the time for payment; pensions and income may be attached; compare p. 78, *ante*.

(*p*) *Ibid.*, s. 82 (3).

(*q*) See title POOR LAW for the functions generally of the Local Government

SECT. 2. The Local Government Board.

regulations, which have statutory force, for the education of children in workhouses, and for the apprenticing of children in workhouses (*r*), and for the appointment of schoolmasters and schoolmistresses for workhouses (*s*).

SECT. 3.—*Powers and Duties of Guardians.*

SUB-SECT. 1.—*In General.*

Duties under Local Government Board orders.

190. Under orders of the Local Government Board guardians must secure that children in workhouses and similar poor law institutions receive efficient elementary education.

Workhouse and "separate" schools.

For the purpose of providing such education the guardians may provide and maintain workhouse schools, either in the workhouse itself or separate from it, which must be conducted in accordance with the regulations contained in the orders of the Local Government Board. The Board may require the guardians to appoint a schoolmaster and schoolmistress for a workhouse as officers of the guardians, and may fix their duties.

Use of public elementary schools.

Guardians may also send children from workhouses to public elementary schools, and pay their fees (if any) (*t*).

Agreements between guardians.

191. Agreements may also be made, subject to the approval of the Local Government Board, by guardians with other guardians having vacant and suitable accommodation, for the maintenance and instruction by the latter of children under sixteen years of age chargeable to the former, who are orphans or deserted by their parents, or whose parents or surviving parent consent. Such children, generally speaking, are subject to the guardians receiving them, so long as they are in their charge, as though they were children chargeable to the parish or union of those guardians (*u*).

Contribution towards the expenses of public elementary schools;

Guardians may contribute towards such of the expenses of providing, enlarging, or maintaining any public elementary school as are certified by the Board of Education to have been incurred, wholly or partly, in respect of scholars taught at the school who are either resident in a workhouse or in an institution to which they have been sent by the guardians from a workhouse or who are boarded out by the guardians (*v*). Guardians may make similar contributions towards expenses incurred by a local education authority in respect of any certified special class or school for defective or epileptic children (*w*).

and of schools for defective or epileptic children.

Board with regard to poor relief, and for the substitution of the Board in the Poor Law Acts for the Poor Law Board and the Poor Law Commissioners. The inspection of poor law schools is now, in many cases, conducted by the inspectors of the Board of Education on behalf of the Local Government Board (see circular of last-named Board, 14th March, 1904).

(*r*) Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), ss. 15, 42. For apprenticeship, see titles INFANTS AND CHILDREN; MASTER AND SERVANT.

(*s*) *Ibid.*, ss. 46, 109.

(*t*) The powers are involved in the general power to give relief in pursuance of orders of the Local Government Board and their predecessors; see title POOR LAW.

(*u*) Poor Law Amendment Act, 1851 (14 & 15 Vict. c. 105), s. 6; amended by Poor Law Amendment Act, 1866 (29 & 30 Vict. c 113), s. 16; and see Statute Law Revision Act, 1893 (56 & 57 Vict. c. 14).

(*v*) Elementary Education Act, 1900 (63 & 64 Vict. c. 53), s. 2.

(*w*) Elementary Education (Defective and Epileptic Children) Act, 1899 (62 & 63 Vict. c. 32), s. 9; and see p. 42, *ante*.

Use of district schools.

192. The guardians of a parish or union not combined in a school district may, with the consent of a district board, upon terms to be agreed between the parties, subject to the approval of the Local Government Board, send to the district school any poor children, being chargeable to such parish or union, who are orphans or are deserted by their parents, or whose parents or surviving parent or guardians consent (*x*).

Contributions to industrial schools.

193. Guardians must contribute towards the expenses of maintaining in a certified industrial school a child who has at their instance, or at the instance of the managers of a poor law school, been sent there as a refractory child or as the child of a criminal parent (*y*).

Power as to blind, or deaf and dumb children.

194. Guardians may send any poor deaf and dumb or blind child who is an idiot or imbecile, or who is resident in a workhouse or in an institution to which he has been sent by guardians from a workhouse, or who is boarded out by guardians, to a certified school as defined below (*z*), and subject to the conditions applicable to certified schools, or, with the approval of the Local Government Board, to any school fitted for the reception of such a child, though not so certified (*a*).

Education in case of out-relief.

195. Out-relief may not be given by guardians to the parent of any child above the age of five years who does not attend school in accordance with the bye-laws of the local education authority (*b*), except upon condition that elementary education in reading, writing, and arithmetic be provided for the child, for which purpose the guardians must give further relief, if necessary. It may not be made a condition of the granting or withholding of such relief to a parent that a child does or does not attend any particular public elementary school. Guardians may not give out-relief to a parent to enable him to pay more than the ordinary fee payable at the school, or more than the fee they are permitted to pay in the case of a poor parent not being a pauper (*c*).

Relief so payable is poor relief, and is payable out of the common fund of the guardians, or, in the case of a union in the metropolis, out of the Metropolitan Common Poor Fund, in which case it is repayable to the guardians accordingly (*d*).

(*x*) Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 51; Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113), s. 16; Statute Law Revision Act, 1874 (No. 2) (37 & 38 Vict. c. 96); Statute Law Revision Act, 1893 (56 & 57 Vict. c. 14). As to school districts, see p. 85, *post*.

(*y*) Children Act, 1908 (8 Edw. 7, c. 67), ss. 58 (5), 74 (11); see pp. 71, 72, *ante*.

(*z*) See p. 84, *post*.

(*a*) Except with respect to the particular classes of blind and deaf children referred to, the function of educating such children is exercisable by local education authorities (Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), ss. 2, 13; Poor Law (Certified Schools), Act, 1862 (25 & 26 Vict. c. 43), s. 10; Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 42); and see p. 41, *ante*. For certified schools for poor law purposes, see p. 84, *post*.

(*b*) As to bye-laws, see p. 58, *ante*.

(*c*) For payments for non-paupers, see p. 84, *post*.

(*d*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 40; Elementary Education Act, 1880 (43 & 44 Vict. c. 23), s. 5. Payments in respect of fees

SECT. 3. Powers and Duties of Guardians.

Duty to pay fees for non-paupers.

Power to use certified schools.

196. If the parent, not being a pauper, of a child attending or about to attend a public elementary school satisfies the guardians that he is unable by reason of poverty to pay the ordinary fee charged at the school, the guardians must pay the whole fee or such part as the parent cannot pay, up to a limit of 3*d.* a week. Attendance or non-attendance at any particular school other than that selected by the parent may not be made a condition of any such payment. Such payments do not impose any disablement or disqualification upon a parent (*e*).

SUB-SECT. 2.—*Certified Schools.*

197. The guardians may send any poor child (*f*), who is an orphan or deserted by his parents, or whose parents or surviving parents consent, to a certified school (*g*), the managers of which are willing to receive him, and may pay such reasonable expenses of the maintenance, clothing, and education of the child while it is at the school, including the expenses of conveyance to and from the school, and, in the case of death, of burial, as may be sanctioned by the Local Government Board. The expenses so incurred are chargeable to the same fund and in the same manner as would be relief otherwise supplied to the child (*h*).

Removal of child.

198. The guardians may remove a child from a certified school whenever they think fit. They must remove any child, if ordered to do so by the Local Government Board, when the Board think that any person is aggrieved by the child being kept at the school (in which case engagements made by the guardians for the payment of the charges of the child become void for the future), or if they are required to remove the child by the managers of the school.

The guardians may not in any case keep a child at a certified school against the will of the parents or surviving parent, or, if the child be over the age of fourteen years, against its own will (*i*).

Certificates of Local Government Board.

199. A certified school is a school (*k*) certified by the Local Government Board, after being inspected and reported upon by a person appointed by the Board, as a school suitable to receive children sent there by guardians in pursuance of their powers under the above-mentioned rules.

may be made directly to the school authority instead of to the parent (*Re Darlington Union Guardians* (1875), 32 L. T. 320). As to the metropolis, see p. 88, *post*.

(*e*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 10; and see, as to fees in public elementary schools, p. 30, *ante*.

(*f*) For the purpose of the rules with regard to certified schools, "child" includes illegitimate child, and in the case of an illegitimate child the consent of the mother, if she has the care, custody, or possession of the child, is sufficient compliance with requirements as to the consent of the parent (Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 23).

(*g*) For definition, see *infra*.

(*h*) Poor Law (Certified Schools) Act, 1862 (25 & 26 Vict. c. 43), ss. 1, 6, 8; Divided Parishes and Poor Law Amendment Act, 1882 (45 & 46 Vict. c. 58), s. 13. For rules as to religious persuasion in the case of certified schools, see p. 90, *post*.

(*i*) Poor Law (Certified Schools) Act, 1862 (25 & 26 Vict. c. 43), ss. 3, 5, 7.

(*k*) The word "school," for the purpose of the rules with regard to certified schools, extends to any institution established for the instruction of blind, deaf,

The Local Government Board may, if they are dissatisfied with the conduct of the school, after giving not less than three months' notice to the managers of the school, withdraw the certificate (*l*).

Inspection of schools.

200. A certified school must, so long as any child sent by guardians is received in it, be open to the visits and inspection of inspectors appointed by the Local Government Board, who are to examine into the conduct of the school and the treatment of the children as they think fit, and to report to the Board, and the school must also be open at all reasonable times to the inspection of any guardian appointed for the purpose by the board of guardians to which he belongs, and which has sent any child to the school (*m*).

SECT. 4.—*District Boards.*

SUB-SECT 1.—*Formation of School Districts.*

Unions may be combined into school districts.

201. The Local Government Board may make orders combining unions, or parishes not in union, into school districts for the management of any class or classes of infant poor not above the age of sixteen years, who are chargeable to any such parish or union, and are orphans or are deserted by their parents, or whose parents or surviving parent or guardians consent to the placing of the child in the school of the district (*n*). A school district may not include any parish any part of which would be more than fifteen miles from any other part of the district, unless the major part of the guardians of the unions or parishes not in union previously consent to the proposed combination (*o*).

Alteration and dissolution of school districts.

The Local Government Board may alter any school district by adding to it, or taking away from it, any parish or union, and may also dissolve any school district (*p*). Where the component unions

dumb, lame, deformed or idiotic persons, but does not apply to any certified, reformatory school (Poor Law (Certified Schools) Act, 1862 (25 & 26 Vict. c. 43) s. 10). For reformatory schools, see p. 70, *ante*. For the powers of guardians as to blind or deaf children, see p. 83, *ante*.

(*l*) Poor Law (Certified Schools) Act, 1862 (25 & 26 Vict. c. 43), s. 2.

(*m*) *Ibid.*, s. 4; and for inspection of poor law schools, see note (*q*), p. 81, *ante*.

(*n*) Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 40.

(*o*) *Ibid.*, s. 40, and Poor Law (Schools) Act, 1848 (11 & 12 Vict. c. 82), s. 1. As to what will be deemed a consent of the major part of the guardians, see title POOR LAW.

(*p*) In the case of such alterations, adjustments in respect of contributions and obligations are to be made by the Local Government Board (Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 43; Poor Law Amendment Act, 1867 (30 & 31 Vict. c. 106), s. 16 (repealed by the Statute Law Revision Act, 1875)). In the case of dissolution the Local Government Board, subject to various statutory provisions, may make orders with reference to adjustments of property and other matters to enable the affairs of the board of a dissolved district to be wound up (Metropolitan Poor Amendment Act, 1869 (32 & 33 Vict. c. 63), s. 1; Dissolved Boards of Management and Guardians Act, 1870 (33 & 34 Vict. c. 2); Poor Law (Dissolution of School Districts and Adjustments) Act, 1903 (3 Edw. 7, c. 19), s. 1; Poor Law Authorities (Transfer of Property Act), 1904 (4 Edw. 7, c. 20), s. 1 (altering the law as decided in *Morton* v. *Bank of England*, [1904] 1 Ch. 664)). For the power of authorities affected by the alteration or dissolution of a school district to make agreements for adjustments, and for the application to such agreements of s. 62 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), see Poor Law Authorities (Dissolution of School Districts and Adjustments) Act, 1903 (3 Edw. 7, c. 19), s. 2 (1).

SECT. 4. District Boards.

or parishes of such a district are formed into one union, the guardians of the latter take over the property and liabilities of the board of the district, and the board is dissolved (*q*).

SUB-SECT. 2.—*Constitution of District Boards.*

Membership.

202. For every school district a district board must be constituted composed of members to be elected by the guardians, or, in the case of a parish where there are no guardians, by the overseers, from qualified persons rated within the district to the relief of the poor, and, conditionally, of *ex-officio* members.

The amount of the qualification of the elected members is to be fixed by the Local Government Board, but the Board may not require a qualification exceeding the net annual value of £40 (*r*).

Legal status of district board.

A district board may hold property on behalf of their district as a corporation, and may sue and be sued as a corporation by the name of the board of management of the district school (*s*).

SUB-SECT. 3.—*Powers and Duties of District Boards.*

Provision and maintenance of schools.

203. A district board is constituted for the maintenance of a school (*a*), and must, if so directed by the Local Government Board with the consent in writing of a majority of the district board (*b*) provide for that purpose such suitably equipped buildings as may be approved by the Local Government Board for the purpose of the relief and management of the poor to be received into the school (*c*).

Enabling power.

204. A district board has such of the powers of guardians for the relief and management of the poor within the school of the district, and for the appointment, payment, and control of paid officers, as the Local Government Board may direct, and a district board may, for the purpose of providing buildings for a school, exercise, subject to any order of the Local Government Board, the powers of guardians for the purchase or hire of land and buildings, and the orders of a district board are to be obeyed and enforced as are orders of guardians (*d*).

(*q*) Metropolitan Poor Amendment Act, 1869 (32 & 33 Vict. c. 63), s. 2, which, *semble*, applies outside the metropolis; Poor Law Authorities (Transfer of Property) Act, 1904 (4 Edw. 7, c. 20), s. 1.

(*r*) Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 42. The chairman of each board of guardians in the district may act as an *ex-officio* member (*ibid.*). For the application to district boards of certain rules applicable to boards of guardians in respect of resignations, abortive elections, vacancies, *de facto* guardians, and disqualification of paid officers, contractors, and others, see Poor Law (Schools) Act, 1848 (11 & 12 Vict. c. 82), s. 2, applying the provisions (as amended) of the Poor Law Amendment Act, 1842 (5 & 6 Vict. c. 57), and title POOR LAW. As to the rule in case of a union or parish which has a representative on a district board being added to or formed into a union, see Metropolitan Poor Amendment Act, 1869 (32 & 33 Vict. c. 63), s. 7, which, *semble*, applies outside the metropolis in the same manner as s. 2; see note (*q*), *supra*.

(*s*) Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 45.

(*a*) *Ibid.*, s. 42.

(*b*) See note (*o*), p. 85, *ante*.

(*c*) *Ibid.*, s. 43.

(*d*) *Ibid.*, ss. 43, 44. For the power to dispose of land, see Poor Law Amend-

SECT. 4. District Boards.

205. The Local Government Board have the same powers of control and direction in respect of the proceedings of a district board, and of committees of the board, and in respect of the paid officers of the board, as they have in respect of the proceedings and paid officers of guardians (*e*).

Inspection.

206. Any of His Majesty's inspectors of schools may, at any time, visit a district school and examine into the proficiency of the scholars (*f*).

Outside children.

207. A district board may receive into a district school and control and manage children sent there by guardians from outside the district (*g*).

SUB-SECT. 4.—*Expenses of District Boards* (*h*).

Apportionment of expenses to parishes.

208. All expenses incurred by a district board in respect of the provision, maintenance, and equipment of buildings, the provision of school and industrial material, and the salaries of officers and servants, and all other expenses incurred incidentally or on the common account of the parishes and unions forming the district, are to be borne by those parishes and unions severally, according to the annual rateable value of the property therein comprised, to be determined according to the valuation lists in force in such unions and according to the latest poor rate for the time being of parishes not in union.

All other expenses incurred in the relief of any child under the management of a district board are to be separately charged by the district board to the parish or union from which the child was sent (*i*).

Contribution of parishes.

209. A district board must call upon the parishes and unions forming the district for such contributions as they deem requisite, and must give notice in a prescribed form and manner, not less than fourteen days before each contribution becomes due, to the clerk to the guardians, and to two at least of the overseers or other officers authorised to levy poor rates (*k*).

ment Act, 1851 (14 & 15 Vict. c. 105), s. 17. For the application, with the necessary modifications, of the rules relating to the superannuation of officers of boards of guardians to officers and servants of district boards, see Poor Law Officers' Superannuation Act, 1896 (59 & 60 Vict. c. 50), s. 14; and title POOR LAW.

(*e*) Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 43; see title POOR LAW.

(*f*) *Ibid.*, s. 43; and see note (*q*), p. 81, *ante*.

(*g*) See p. 83, *ante*.

(*h*) For grants by county and county borough councils in aid of the educational expenses of poor law authorities, see p. 88, *post*.

(*i*) Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 11; Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 47; 13 & 14 Vict. c. 11; Metropolitan Poor Act, 1867 (30 & 31 Vict. c. 6), ss. 47, 48, 55; Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66),

(*k*) Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 46. For the remedy in the event of default by guardians to pay contributions, see *ibid.*, s. 46; and for remedies by and against guardians generally, see title POOR LAW.

SECT. 4. District Boards.

Borrowing.

210. A district board may borrow upon the security of the future poor rates of the parishes and unions forming the district to meet expenditure representing charges of a capital or permanent nature, upon the conditions applicable in the like case to guardians. But no loan may be such as to cause the total debt of the district board to exceed one-sixteenth of the annual rateable value of the district, unless the limit be extended by the Local Government Board in manner similar to that applicable to loans to guardians (*l*).

Audit.

The accounts of a district board are audited by an auditor appointed by the Local Government Board. The rules with reference to the audit of accounts relating to the relief of the poor apply, generally, with various additions, to the audit of accounts of district boards (*m*).

SECT. 5.—*Grants to Poor Law Authorities by Councils in respect of Education.*

Grants by county and county borough councils.

211. Councils of counties and of county boroughs are required to make grants (in substitution for certain grants formerly paid out of the Exchequer) to guardians of unions or officers for any other area, wholly or partly in the county or county borough, of such sums as the Local Government Board certify to be due in respect of the remuneration of teachers in poor law schools, and also to pay to the guardians any school fees paid by them for pauper children sent from a workhouse to a public elementary school outside the workhouse, and also, except in London, to make annual grants on a prescribed scale to guardians of unions wholly or partly in their area, in respect of the cost of officers (other than teachers in poor law schools) of the union, and of district schools to which the union contributes (*n*).

SECT. 6.—*Rules specially applicable to the Metropolis.*

Nomination of members by Local Government Board.

212. The Local Government Board may nominate as members of a school district board in the metropolis (*o*) such persons as they think fit, being justices of the peace for any county or place, resident in the school district, or ratepayers resident in that district, and assessed to the poor rate therein on an annual rateable value of not less than £40, but so that the number of nominated

(*l*) Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 44; Poor Law Act, 1889 (52 & 53 Vict. c. 56), s. 2 (5) (repealing previous provisions for certain purposes); compare Poor Law (Schools) Act, 1848 (11 & 12 Vict. c. 82), s. 1; Poor Law Act, 1897 (60 & 61 Vict. c. 29), s. 1; and see title POOR LAW as to loans to guardians.

(*m*) Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 49; District Auditors Act, 1879 (42 & 43 Vict. c. 6); see title POOR LAW for general provisions with reference to the audit of poor law accounts.

(*n*) Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 24 (2), 26, 34; and see titles POOR LAW; LOCAL GOVERNMENT.

(*o*) For definitions, see title METROPOLIS; Metropolitan Poor Act, 1867 (30 & 31 Vict. c. 6), s. 3; and Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), s. 250.

members does not exceed one-third of the number of elected members (*p*).

SECT. 6. Rules specially applicable to the Metropolis.

213. Guardians and managers of any school or asylum district in the metropolis (*q*) may, with the consent of the Local Government Board, provide and maintain ships to train boys for the sea service. Every ship so provided is a school or asylum within the meaning of the poor law Acts (*r*).

Training ship.

214. The following purposes—namely, the salaries (*s*) of all officers employed by a school district board (if the appointment of such officer is approved by the Local Government Board), the maintenance of pauper children in workhouse, district, certified, or licensed schools (*t*), the instruction of orphans or deserted children placed out by the guardians with the consent of the Local Government Board—are purposes in respect of which expenses incurred by guardians in the metropolis are repayable out of the Metropolitan Common Poor Fund (*u*).

Expenses repayable out of Metropolitan Common Poor Fund.

SECT. 7.—*Religious Instruction.*

215. The general principle of the Poor Law Acts is that the religious instruction, if any, which a child in a workhouse or other poor law school receives must be in accordance with the religious faith which he or his parents profess (*a*).

Instruction in faith of parent.

216. The Local Government Board may not make any order regulating poor relief which authorises the education of any child in a workhouse school in any religious creed, other than that professed by its parents or surviving parents, if any such parent, or, in the case of an orphan child, the godfather or godmother, objects. A substantially similar rule applies to regulations for the conduct of district schools (*b*).

Orders of Local Government Board.

217. In every workhouse or district school due inquiry is to be made into, and a register kept of, the religious creed of every inmate. In the case of children under twelve, the creed entered is to be that of the father or, if that is not known, of the mother (*c*).

Creed register.

(*p*) Metropolitan Poor Act, 1867 (30 & 31 Vict. c. 6), s. 49.

(*q*) For asylums and asylum districts, see titles POOR LAW; PUBLIC HEALTH.

(*r*) Metropolitan Poor Amendment Act, 1869 (32 & 33 Vict. c. 63), s. 11.

(*s*) Metropolitan Poor Amendment Act, 1870 (33 & 34 Vict. c. 18), s. 2. "Salaries" includes "rations."

(*t*) Metropolitan Poor Act, 1867 (30 & 31 Vict. c. 6), s. 69; and see Metropolitan Poor Act, 1897 (61 & 62 Vict. c. 45), s. 1.

(*u*) Metropolitan Poor Amendment Act, 1869 (32 & 33 Vict. c. 63), s. 21. For the Metropolitan Common Poor Fund, see title POOR LAW.

(*a*) This section states only in outline the provisions in question, which exhibit some overlapping, such as is not infrequent in poor law legislation, accompanied by varying phraseology; the main purport of the legislation is clear. For a saving of the principle where the guardians are placed *in loco parentis*, compare Poor Law Act, 1889 (52 & 53 Vict. c. 56), s. 1 (6).

(*b*) Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), s. 19; Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 43, which substitutes for district schools the next of kin for the godparents in case of orphans or deserted children.

(*c*) Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), ss. 16, 17.

SECT. 7. Religious Instruction.

Any question arising as to the correctness of the register is to be determined by the Local Government Board (*d*).

The register is to be open to the inspection of ratepayers, and of the minister of the nearest place of worship of any denomination (*e*).

Visits of minister.

218. Any such minister may, in accordance with regulations of the Local Government Board, visit and instruct any inmate of any such workhouse or school entered in the register as belonging to his denomination, unless the inmate, being over the age of fourteen years, after at least one visit, makes objection (*f*).

Different instruction forbidden.

219. No child, who is regularly so visited and instructed, may, if his parents or surviving parent, or in the case of an orphan or deserted child, the minister who instructs him, make request in writing to that effect, be instructed in, or be permitted to attend the worship of, any other religious creed. But this rule does not apply to a child over twelve years who desires such other instruction or worship and is considered by the Local Government Board to be competent to exercise a judgment on the matter (*g*).

Dissenting children.

220. The parent, responsible relative, or godparent of any child in a workhouse or district school, not belonging to the Church of England, may apply to the Local Government Board that the child be sent to a certified school established for children of the religion to which the child belongs, and the Board may order that the application be granted. The guardians must then send the child to the school and maintain it there in accordance with the rules relating to certified schools (*h*).

Certified schools.

221. A child may not be sent to a certified school which is conducted on the principles of any religious denomination to which the child does not belong (*a*).

Part VII.—Universities, and Schools under the Public Schools Acts.

SECT. 1.—*Universities in General.*

Origin and characteristics.

222. A university is nowhere legally defined. The term is usually understood to mean a body incorporated for the purposes of learning (*b*), with various endowments and privileges. Such bodies

(*d*) Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 18.
(*e*) *Ibid.*, s. 19.
(*f*) *Ibid.*, s. 20, which is apparently intended to replace analogous provisions in s. 19 of the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), and in s. 43 of the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101).
(*g*) Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 22.
(*h*) Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113), s. 14.
(*a*) Poor Law (Certified Schools) Act, 1862 (25 & 26 Vict. c. 43), s. 9.
(*b*) The word *universitas*, originally applicable to any corporate body, became appropriated to the learned Corporations (see Pollock and Maitland, History of English Law, 2nd ed., Vol. I., p. 495). As to *universitas*, see Gierke, Political Theories of the Middle Ages, Maitland's Introduction, pp. xviii.—xliii.

were anciently founded by papal bull (*c*) or charter (*d*), later by royal charter or Act of Parliament. They ordinarily contain colleges, which are independent corporations similarly founded.

The constitution, functions, and privileges of universities are governed by the terms of their instruments of foundation, or by Acts of Parliament. In so far as there can be said to be any general law relating to universities or their colleges, it belongs, strictly speaking, either to the law of corporations or to that of charitable trusts (*e*). But the statutes and instruments of foundation relating to individual universities do in fact result in producing characteristics capable to some extent of classification.

A university usually consists of a chancellor, a body of graduates, and students. Its government is usually provided for by the creation of a council or senate, which acts as the executive, and has an initiative in such legislation as the university is empowered to carry out, sometimes subject to the King in Council, sometimes with the further assent of Parliament.

It is one of the privileges of a university to confer degrees on those of its students who satisfy the necessary conditions (*f*). The older universities have enjoyed special privileges of jurisdiction over their members (*g*). Their libraries have certain rights under the Copyright Acts (*h*), and Oxford and Cambridge have rights as regards their presses (*i*). The Universities of Oxford, Cambridge, and London elect representatives to Parliament (*j*).

A university which teaches in addition to conferring degrees will

(*c*) See title CORPORATIONS, Vol. VIII., p. 314.

(*d*) Sometimes confirmed by Act of Parliament. See, as to Oxford and Cambridge, stat. (1571) 13 Eliz. c. 29; 4 Co. Inst. 227.

(*e*) See titles CHARITIES, Vol. IV., p. 101; CORPORATIONS, Vol. VIII., p. 229, and *passim*.

(*f*) Certain universities have power to hold qualifying examinations in medicine, and to be represented on the General Medical Council. See Medical Acts, 1858 (21 & 22 Vict. c. 90) and 1886 (49 & 50 Vict. c. 48), which apply to Oxford, Cambridge, Durham, London, and Manchester, and have been extended to Birmingham (63 & 64 Vict. c. xix.), Liverpool (3 Edw. 7, c. ccxxxii.), Leeds (4 Edw. 7, c. xxxv.), Sheffield (5 Edw. 7, c. clii.), and Bristol (9 Edw. 7, c. xlii.). As to women's qualifications, see Medical Act, 1876 (39 & 40 Vict. c. 41); see also title MEDICINE AND PHARMACY. Such privileges as belong to the graduates of Oxford, Cambridge, and London Universities (in respect of offices open, or exemptions granted, to them by any Act of Parliament or any regulation of a public authority) have been extended to similar graduates of the Universities of Victoria (51 & 52 Vict. c. 45), Wales (2 Edw. 7, c. 14), Liverpool (4 Edw. 7, c. 11), Leeds (4 Edw. 7, c. 12), and Bristol (9 Edw. 7, c. 42). For the removal of the privileges of graduates of particular universities in regard to masterships in schools within the Endowed Schools Acts, see note (*e*), p. 106, *post*. Certain degrees of a university in the United Kingdom exempt their holders from certain examinations for the solicitors' profession; see Solicitors Act, 1877 (40 & 41 Vict. c. 25), ss. 6, 10, amended by Solicitors Act, 1894 (57 & 58 Vict. c. 9), s. 3, and regulations made thereunder; and title SOLICITORS. See also title BARRISTERS, Vol. II., p. 364.

(*g*) See title COURTS, Vol. IX., pp. 149, 187.

(*h*) See title COPYRIGHT, Vol. VIII., p. 175.

(*i*) See title PRESS AND PRINTING.

(*j*) See title PARLIAMENT; and as to Oxford, Cambridge, and London, pp. 94, 95 and 96, *post*.

SECT. 1. Universities in General.

possess endowments for professors and teachers, whose lectures are to be open to the students, and for scholarships and prizes.

University colleges, like universities, are corporate bodies (*k*), constituted and managed according to the terms of their charters, their founders' statutes, or their other instruments of foundation.

The colleges within the Universities of Oxford and Cambridge are governed by statutes which were made by Commissioners appointed in 1877 for that purpose (*l*). These relate not merely to the internal organisation and government of the colleges, but to their contributions to various university purposes.

Application for charter.

223. Where application is made for a charter of foundation for any university or college, a copy of the application and of the draft charter must be laid before Parliament for at least thirty days before the Privy Council submit to the Crown their report thereon (*m*).

Visitors.

224. The Universities of Oxford and Cambridge, being civil and lay corporations, have, it seems, no visitor (*n*).

The colleges of Oxford and Cambridge are charitable foundations, though the universities themselves are not (*o*). The colleges are subject to visitation (*p*).

Ownership of land.

225. Universities and their colleges are, as corporations, subject to certain restrictions in dealing with land (*q*), but are to a great extent exempted by statute from the operation of the law of mortmain (*r*).

(*k*) For colleges "in reputation" and not incorporated, see *Adams' Case* (1602), 4 Co. Rep. 106 b; compare *Gilford's Case* (1585), 4 Leon. 156.

(*l*) See Universities of Oxford and Cambridge Act, 1877 (40 & 41 Vict. c. 48), s. 3. The statutes relating to the colleges having been passed, both this section and s. 16 were repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

(*m*) College Charter Act, 1871 (34 & 35 Vict. c. 63), s. 2.

(*n*) For visitation of corporations, see title CORPORATIONS, Vol. VIII., p. 355. In certain cases a mandamus has been issued. See generally *R.* v. *Cambridge (Vice-Chancellor)* (1765), 3 Burr. 1647; see also *Walker's (Dr.) Case* (1735), Lee, *temp.* Hard. 215 (case cited of mandamus to appoint Regius Professor at Cambridge); *R.* v. *Cambridge University* (1723), 8 Mod. Rep. 148, 151 (mandamus to restore to a degree); compare *R.* v. *Patrick* (1667), 2 Keb. 166, 167, and Lord MANSFIELD'S observations in *R.* v. *Askew* (1768), 4 Burr. 2186, 2189. But see *R.* v. *Cambridge University* (1794), 6 Term Rep. 104, 107. In *R.* v. *Oxford (Vice-Chancellor)* (1872), L. R. 7 Q. B. 471, a decision of the Hebdomadal Court was reviewed by mandamus. For writ of prohibition to a university, see *Re Oxford (Chancellor) and Taylor* (1841), 1 Q. B. 952.

(*o*) See title CHARITIES, Vol. IV., p. 283. As to how far colleges or universities are eleemosynary corporations, see *ibid.*, p. 282; title CORPORATIONS, Vol. VIII., pp. 304, 305; 1 Bl. Com. 470—471; Stephen's Commentaries (ed. Jenks, 1903), Vol. III., pp. 3—4.

(*p*) See title CHARITIES, Vol. IV., pp. 288—291 (constitution of visitor); pp. 291—294 (powers and duties of visitor); pp. 299—300 (how controlled by court); pp. 339—340 (procedure of visitor). In universities founded under modern charters, the Crown is usually the visitor.

(*q*) See titles CHARITIES, Vol. IV., p. 140; CORPORATIONS, Vol. VIII., p. 367.

(*r*) Oxford and Cambridge, with their colleges, and the schools of Eton, Winchester, and Westminster (to which the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 7 (1), added London, Durham, and Victoria Universities), are exempt from the restrictions on charitable assurances contained in Part II. of that Act; see title CHARITIES, Vol. IV., p. 140. The exemption has also been extended to Liverpool (3 Edw. 7, c. ccxxxii., s. 12), Leeds (4 Edw. 7, c. xxxv., s. 10), Sheffield (5 Edw. 7, c. clii., s. 9), and Bristol (9 Edw. 7,

SECT. 1. Universities in General.

Oxford, Cambridge, and Durham Universities, with the colleges therein, have statutory powers of buying, selling, exchanging, and mortgaging lands, and of granting leases for agricultural, building, and mining purposes (*a*).

They may exercise many of the powers conferred on a tenant for life by the Settled Land Acts, 1882 to 1890 (*b*), and they may borrow money for the purposes of an extensive list of improvements (*c*); but their dealings with their landed property and with money arising from its sales are in many respects controlled by the Board of Agriculture and Fisheries (*d*).

The public buildings, offices, gardens, walks, and grounds of any hall or college in any university in the United Kingdom are, unless occupied by individual members or persons paying rent, exempt from property tax (*e*).

Advowsons.

226. The head and fellows of any college having in their corporate capacity rights of presentation to any benefice may convey tithes or lands to benefit college livings (*f*). The Universities of Oxford, Cambridge, and Durham, and any college therein, may purchase and sell advowsons and annex thereto land or tithes in lieu of annual rents (*g*); and they may augment endowments out of college properties (*h*).

Religious tests.

227. General religious tests formerly imposed in the Universities of Oxford, Cambridge, and Durham and their colleges have been

c. xlii., s. 10). As to exemption from the Charity Commissioners' jurisdiction, see title CHARITIES, Vol. IV., p. 304; see also as to their leases, *ibid.*, p. 228; as to their mortgages, *ibid.*, p. 236; and as to purchase-money under the Lands Clauses Act, *ibid.*, p. 241. The exemption from the Charitable Trusts Acts (see *ibid.*, p. 247) enjoyed by Oxford, Cambridge, London, and Durham Universities and the colleges therein has been extended to the universities and colleges of Birmingham (63 Vict. c. xix., s. 14), Manchester (4 Edw. 7, c. xiii., s. 11), and Liverpool, Leeds, Sheffield, and Bristol (see Acts cited earlier in this note).

(*a*) Under the Universities and College Estates Acts, 1858 (21 & 22 Vict. c. 44), s. 21 (application and investment of rents); 1860 (23 & 24 Vict. c. 59), s. 1; 1898 (61 & 62 Vict. c. 55).

(*b*) Universities and College Estates Act, 1898 (61 & 62 Vict. c. 55), s. 1. As to investment of capital moneys, see *ibid.*, s. 2. See also title REAL PROPERTY AND CHATTELS REAL.

(*c*) Universities and College Estates Acts, 1858 (21 & 22 Vict. c. 44), s. 27; 1898 (61 & 62 Vict. c. 55), s. 3, and Sched. III.

(*d*) See title AGRICULTURE, Vol. I., pp. 267—269.

(*e*) Under Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 61, Sched. A, r. 6, and Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 5, such colleges and halls would remain exempt even though they may have lost their eleemosynary character (*Cawse* v. *Nottingham Lunatic Hospital*, [1891] 1 Q. B. 585, 590, 591). A theological college is not so exempt (*Bain* v. *Free Church of Scotland* (1897), 34 Sc. L. R. 351; 3 Tax Cas. 537; compare p. 97, *post*). See title INCOME TAX.

(*f*) See Augmentation of Benefices Act, 1831 (1 & 2 Will. 4, c. 45), ss. 11, 12, 29; see title ECCLESIASTICAL LAW, Vol. XI., pp. 569, 727.

(*g*) Ecclesiastical Commissioners Act, 1840 (3 & 4 Vict. c. 113), extended by Universities and College Estates Act Extension, 1860 (23 & 24 Vict. c. 59), s. 7; Augmentation of Benefices Act, 1854 (17 & 18 Vict. c. 84); Universities and College Estates Act Extension, 1860 (23 & 24 Vict. c. 59), s. 11, and see title ECCLESIASTICAL LAW, Vol. XI., pp. 577, 578.

(*h*) See title ECCLESIASTICAL LAW, Vol. XI., pp. 723, 755, and as to Oxford, see Oxford University Act, 1857 (20 & 21 Vict. c. 25), s. 3. As to severance of benefices from headships of colleges, see Universities and College Estates Act Extension, 1860 (23 & 24 Vict. c. 59), s. 7; Universities and College Estates Amendment Act, 1880 (43 & 44 Vict. c. 46), s. 5.

SECT. 1. Universities in General.

abolished. No person taking a degree (otherwise than in divinity) or holding any lay office can be required to make any declaration or be subjected to any disability in respect of his religious belief, or be called upon to attend public worship of any church or sect to which he does not belong (*i*). No one can be compelled to attend any lecture to which he (or, if he be under full age, his parent or guardian) objects on religious grounds (*j*).

Treasury grants.

228. Certain universities and university colleges receive grants out of moneys provided by Parliament (*k*).

SECT. 2.—*Particular Institutions.*

Special characteristics.

229. Universities and colleges as already indicated fall under the ordinary law as to corporations (*l*). In addition each university or college, as a particular institution with special charters or statutes, may have special characteristics not capable of classification.

Oxford.

230. The executive government of Oxford University (*m*) is for the most part vested in a hebdomadal council (*n*), which consists of the chancellor, vice-chancellor, proctors, six heads of colleges, six university professors, and six members of convocation (*o*). This body possesses an initiative in legislation, which is first submitted to congregation or the resident body of masters of arts, and finally to convocation or the entire body of masters.

The university returns two members to Parliament (*p*).

(*i*) Universities Tests Act, 1871 (34 & 35 Vict. c. 26), s. 3. The Act does not interfere with the lawfully established system of religious instruction, worship, and discipline in the universities or colleges (s. 4). Colleges must provide religious teaching for all undergraduates belonging to the Established Church (s. 5), and morning and evening prayer (s. 6). Nothing in the Act prevents colleges created since the Act from restricting their endowments to members of a particular religious community (*R.* v. *Hertford College* (1878), 2 Q. B. D. 590; 3 Q. B. D. 693).

(*j*) Universities Tests Act, 1871 (34 & 35 Vict. c. 26), s. 7.

(*k*) For example, in the Civil Services Estimates, 1909—1910, the following items appear: University of London, £8,000; Victoria, Manchester, £2,000; Birmingham, £2,000; Wales, £4,000; Liverpool, £2,000; Leeds, £2,000; Sheffield, £2,000. There is also a grant in aid (£100,000) of university colleges giving education of a university standard in arts and sciences, a further grant of £4,000 each to the University Colleges of North Wales, South Wales and Monmouthshire and Aberystwyth, and an additional grant of £15,000 towards the expenses of the University of Wales and the university colleges above mentioned.

(*l*) See generally titles CHARITIES, Vol. IV., pp. 140, 282, and 283; CORPORATIONS, Vol. VIII., p. 305.

(*m*) Incorporated by stat. (1571) 13 Eliz. c. 29.

(*n*) See Oxford University Act, 1854 (17 & 18 Vict. c. 81), ss. 5, 6, 8—15, 21, 40.

(*o*) For the composition of congregation, see *ibid.*, ss. 14, 16, 40. As to convocation, see s. 22. As to statutes, see ss. 17—20, and Oxford University Act, 1862 (25 & 26 Vict. c. 26), ss. 7—10; see also Oxford University Act, 1854 (17 & 18 Vict. c. 81), ss. 25, 26 (licences for private halls); Oxford University (Justices) Act, 1886 (49 & 50 Vict. c. 31) (chancellor and vice-chancellor as county justices). As to the Oxford University Court, see title COURTS, Vol. IX., p. 187; see also Universities Act, 1825 (6 Geo. 4, c. 97) (appointment of university constables); Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 67 (agreement for water supply by local authorities); Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 257 (rights saved, vice-chancellor precedes mayor). As to the powers of the university under the Medical Acts, and its exemption in respect of mortmain restriction, and the Charitable Trusts Acts, see notes (*f*), p. 91, (*r*), p. 92, *ante*, respectively.

(*p*) See title PARLIAMENT.

Cambridge.

231. The legislative body of the University of Cambridge (*q*) is the senate, which consists of the chancellor, vice-chancellor, the doctors of various faculties, and the bachelors of divinity and masters of various faculties whose names are upon the university register. The council of the senate offers to the senate proposals for confirmation or rejection. This council is made up of the chancellor, vice-chancellor, four heads of colleges, four university professors, and eight persons chosen from the members of the senate (*r*).

The university returns two members to Parliament (*s*).

Durham.

232. The constitution of Durham University includes a chancellor, a senate of thirty-nine persons, a council, and convocation. The senate controls the university property, and, within certain limits, regulates the conditions of study and examination. The council of the Durham colleges (itself incorporated) provides for the teaching, residence, maintenance and discipline of students in Durham (*t*).

London.

233. The University of London (*a*) has a senate and three advisory committees. The senate consists of the chancellor and fifty-four members (*b*). The three committees are the academic

(*q*) Incorporated by stat. (1571) 13 Eliz. c. 29, with confirmation of privileges then held under charter or by prescription.

(*r*) See Cambridge University Act, 1856 (19 & 20 Vict. c. 88), ss. 5, 6; see also s. 43 (statutes); s. 21 (university offices); ss. 23, 24 (licensing of hostels); Universities Act, 1825 (6 Geo. 4, c. 97) (appointment of university constables); Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 67 (agreement for water supply by local authorities); Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 257 (rights saved; vice-chancellor to precede mayor). As to the Medical Acts, Mortmain, and the Charitable Trusts Acts, see notes (*f*), p. 91, (*r*), p. 92, *ante*, respectively. As to the Chancellor's Court at Cambridge, see title COURTS, Vol. IX., p. 149.

(*s*) See title PARLIAMENT.

(*t*) Founded by private Act (1832) 2 & 3 Will. 4, c. 19, and by charter of 1837 (Patent Rolls, 7 Will. 4, part 22, No. 1), and reconstituted by the University of Durham Act, 1908 (8 Edw. 7, c. 20), which defines the powers and duties of the senate, council etc. (see Sched. I., Parts V., VI. etc.). The Lord Bishop of Durham visits, but the Dean and Chapter of Durham have ceased to be governors. As to the appointment of commissioners and statute-making, see Durham University Act, 1861 (24 & 25 Vict. c. 82); University of Durham Act, 1908 (8 Edw. 7, c. 20), ss. 1—4. As to the warden's holding of benefices, see Pluralities Act, 1850 (13 & 14 Vict. c. 98), s. 6. See as to graduates' privileges, stat. (1837) 7 Will. 4 & 1 Vict. c. 56, s. 1 (now repealed); as to the Medical Acts, Mortmain, and the Charitable Trusts Acts, see notes (*f*), p. 91, (*r*), p. 92, *ante*, respectively. The Newcastle-on-Tyne College of Medicine became in 1870 the Durham University College of Medicine. The affiliated College of Physical Science founded at Newcastle in 1871 was in 1904 renamed the Armstrong College, Newcastle-on-Tyne.

(*a*) The Gresham foundation dates from 1548. Charters of 1836 constituted the university and university college (Patent Rolls, 7 Will. 4, part 9, No. 14) Developed by various other charters in 1850, 1858, 1863, 1867, and 1878, the university was reconstituted by the Act of 1898 (61 & 62 Vict. c. 62). The powers and constitution of the senate, council, convocation etc. are dealt with in the schedule thereto. As to graduates' privileges, the Medical Acts, Mortmain, and the Charitable Trusts Acts, see notes (*f*), p. 91, (*r*), p. 92, *ante*, respectively; as to calculation of value for purposes of the Mortmain Acts, see also 5 Edw. 7, c. xci., s. 15.

(*b*) Four appointed by the King in Council, sixteen by convocation, sixteen by various faculties, the remainder by various bodies. For the powers of commissioners to make statutes, see 61 & 62 Vict. c. 62, ss. 1 – 3.

SECT. 2. Particular Institutions.

council, the council for "external students," and the board for the promotion of university extension teaching. Certain bodies have been constituted schools of the university (*c*).

The university returns one member to Parliament (*d*).

Victoria.

234. The Victoria University of Manchester consists of a chancellor, vice-chancellor, two pro-vice-chancellors, a court of governors, a council or executive body of twenty-four members, a senate, boards of faculties, and convocation (*e*).

Wales.

235. In the University of Wales (*f*) are incorporated the three colleges at Aberystwyth, Cardiff, and Bangor. The university court (which consists of the chancellor, certain nominees of the Lord President of the Council, and certain representatives of Welsh county councils and county boroughs) governs with the assistance of recommendations from a senate consisting of professors and lecturers (*g*).

Birmingham.

236. The University of Birmingham consists of a chancellor, a principal, a court of governors (including nominees of various public bodies), and a council (including the principal and vice-principal, deans of faculties, and professors) (*h*).

Liverpool.

237. The University College of Liverpool, formerly part of the University of Manchester, became the Liverpool University in 1900. It contains a chancellor, pro-chancellors, a vice-chancellor, a court or supreme governing body, a council or governing and executive body, a senate, and convocation (*i*).

Leeds.

238. The Yorkshire College, Leeds, similarly became an

(*c*) Bedford College, London; Wye Agricultural College (see University of London Act, 1898 (61 & 62 Vict. c. 62), s. 8); Royal Holloway College (see University of London Act, 1899 (62 & 63 Vict. c. 24), s. 1). University College was transferred to the university in 1905 (see 5 Edw. 7, c. xci.), and King's College incorporated therewith in 1908 (see 8 Edw. 7, c. xxxix., which regulates the finance of the transfer).

(*d*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), ss. 24, 25, 44, 45; Universities Election Act, 1868 (31 & 32 Vict. c. 65). See title PARLIAMENT.

(*e*) Victoria University received a charter in 1880 (Patent Rolls, 43 Vict., part 2, No. 42), and included three colleges: Owens College, the University College, Liverpool (admitted in 1884), and the Yorkshire College, Leeds (admitted in 1887). The Liverpool and Leeds colleges subsequently became independent universities by charter; and in 1904 (see 4 Edw. 7, c. xiii.) Owens College was dissolved and its property and liabilities transferred to Victoria University, which had been reconstituted in 1903 (see 3 Edw. 7, c. ccxxxii., and charter 15th July, 1903). The university obtained a supplementary charter in 1883 (Patent Rolls, 46 Vict. part 4, No. 7), dealing with medical and surgical degrees. As to graduates' privileges, the Medical Acts, Mortmain, and the Charitable Trusts Acts, see notes (*f*), p. 91, (*r*), p. 92, *ante*, respectively.

(*f*) See the Royal Charter of 1893 (Patent Rolls, 57 Vict., part 1).

(*g*) As to graduates' privileges, see note (*f*), p. 91, *ante*. As to Treasury grants, see p. 94, *ante*.

(*h*) Mason College (see 60 & 61 Vict. c. xx.) was dissolved and its property and liabilities transferred to Birmingham University in 1900 (see 63 & 64 Vict. c. xix.). See the university charter (Patent Rolls, 63 Vict., part 4). As to the University and the Medical Acts and Charitable Trusts Acts, see notes (*f*), p. 91, (*r*) p. 92, *ante*, respectively.

(*i*) See charter (Patent Rolls, 63 Vict., part 4) and University of Liverpool Act, 1904 (4 Edw. 7, c. 11). As to graduates' privileges, the Medical Acts, Mortmain, and the Charitable Trusts Acts, see notes (*f*), p. 91, (*r*), p. 92, *ante*, respectively.

independent university in 1904. Its charter defines its authorities to be the chancellor, pro-chancellors, vice-chancellor, pro-vice-chancellor, the court, the council, the senate, the faculties, the boards of faculties, and the convocation. The court is the governing body, the council the executive; the senate controls the instruction and education subject to the court (*k*).

239. Other universities have been founded in England at Sheffield (*l*) and at Bristol (*m*). Their constitutions (defined by their charters and the statutes contained in the schedules thereto annexed) largely resemble that of the University of Leeds. Sheffield. Bristol.

SECT. 3.—*Schools under the Public Schools Acts.*

240. A "public school" is nowhere defined in law (*n*). The name is commonly given to certain ancient foundations affording education of a secondary character to boys, which have risen to national importance, and to certain younger foundations, modelled upon the former, some of which have obtained royal charters (*o*). Public schools.

The Public Schools Acts apply to seven schools only, namely, Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby, and Shrewsbury (*p*).

The income of these schools arises from endowments and from fees paid by students; in some cases the property constituting the endowment is considerable. They are subject to the general law of corporations in respect of landed property (*q*), except in so far as they are by general or special statute exempted. With the Property.

(*k*) See charter 25th April, 1904, and statutes in schedule thereto. As to graduates' privileges, the Medical Acts, Mortmain, and the Charitable Trusts Acts, see notes (*f*), p. 91, (*r*), p. 92, *ante*, respectively.

(*l*) See charter 31st May, 1905. The University College of Sheffield (incorporated in 1897) was dissolved and its property and liabilities transferred to Sheffield University by 5 Edw. 7, c. clii., which see as to the Medical Acts, Mortmain, and the Charitable Trusts Acts. See also notes (*f*), p. 91, (*r*), p. 92, *ante*.

(*m*) By charter 21st May, 1909. The University College of Bristol (incorporated in 1876) was dissolved and its property and liabilities transferred to the university by 9 Edw. 7, c. xlii., which see as to graduates' privileges, the Medical Acts, Mortmain, and the Charitable Trusts Acts. See also notes (*f*), p. 91, (*r*), p. 92, *ante*.

(*n*) The term is used in the Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 61, Sched. A, r. 6, with reference to exemptions in respect of charitable institutions; see *Blake* v. *London Corporation* (1887), 17 Q. B. D. 79. See title INCOME TAX.

(*o*) See the following charters:—Patent Rolls, 9 Vict., part 6, No. 17 (1845, Marlborough, supplemented in 1853); 17 Vict., part 2, No. 13 (1853, Wellington, supplemented in 1855 and 1862); 26 Vict., part 2, No. 8 (1862, Bradfield); 28 Vict., part 1, No. 19 (1864, Haileybury); 40 Vict., part 3, No. 25 (1877, Clifton). See also Cheltenham College Act, 1894 (57 & 58 Vict. c. ciii.).

(*p*) A royal commission was appointed in 1861 to inquire into the endowments and management of the seven schools named in the text and also of St. Paul's and the Merchant Taylors' Schools. The Public Schools Acts were subsequently passed, namely, in 1868 (31 & 32 Vict. c. 118), 1869 (32 & 33 Vict. c. 58), 1871 (34 & 35 Vict. c. 60), and 1873 (36 & 37 Vict. cc. 41 and 62). St. Paul's and the Merchant Taylors' Schools were omitted from the Acts, the Mercers' and Merchant Taylors' Companies having claimed private property in their endowments. The seven schools to which the Acts apply were expressly exempted from the Endowed Schools Acts (see p. 102, *post*), and had been, excepting Shrewsbury, exempted from the Grammar Schools Act, 1840 (3 & 4 Vict. c. 77) (see *ibid.*, s. 24, and p. 116, *post*).

(*q*) See titles CHARITIES, Vol. IV., p. 140; CORPORATIONS, Vol. VIII., p. 367.

SECT. 3. Schools under the Public Schools Acts.

exception of Eton and Winchester, they can deal with their land only under the control of the Board of Education as successors of the Charity Commissioners (*r*).

In the case of these seven schools the headmaster is appointed by, and holds his office at the pleasure of, the governing body (*s*). All other masters are appointed by, and hold their office at the pleasure of, the headmaster (*t*).

Appointment of masters.

At each of these schools there are foundation scholars, or boys entitled to education wholly or partly gratuitous (*a*).

Chapels.

The chapels of these seven schools are free from the control of the incumbent of the parish in which they stand. They are deemed to be dedicated and allowed by the ecclesiastical law of the realm for the performance of public worship and the administration of the sacraments according to the Church of England Liturgy (*b*).

(*r*) Eton, Winchester, and Westminster are exempted from Part II. of the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), as to charitable assurances for the better support and maintenance of the scholars upon the foundations (*ibid.*, s. 7 (1); and see title CHARITIES, Vol. IV., p. 140); and from land tax (Land Tax Act, 1797 (38 Geo. 3, c. 5), s. 25). Eton and Winchester are exempted from the Charitable Trusts Acts (Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124), s. 49); and see title CHARITIES, Vol. IV., p. 247; and from certain restrictions as to leases (stat. (1576) 18 Eliz. c. 6; Universities and College Estates Act, 1858 (21 & 22 Vict. c. 44), s. 30; Universities and College Estates Act, 1898 (61 & 62 Vict. c. 55)). They are subjected to the authority of the Ecclesiastical Commissioners in respect of advowsons etc. (Ecclesiastical Commissioners Act, 1840 (3 & 4 Vict. c. 113), ss. 69, 70, extended to them by Universities and College Estates Act Extension, 1860 (23 & 24 Vict. c. 59), ss. 7—10; Universities and College Estates Amendment Act, 1880 (43 & 44 Vict. c. 46), s. 5); and see title ECCLESIASTICAL LAW, Vol. XI., p. 577. The Universities and College Estates Acts (see p. 93, *ante*) apply to them. As to Eton property, see also Public Schools (Eton College Property) Act, 1873 (36 & 37 Vict. c. 62), ss. 2, 3; as to Harrow property (transferred from old to new corporation), *ibid.*, s. 4; as to Rugby (scheme for apportionment), see Public Schools Act, 1872 (35 & 36 Vict. c. 54), s. 5, repealed by Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39). At the request of the governing body of Shrewsbury, the trustees of certain livings as to which certain masters have claims, have power to sell them, and apply the proceeds to the benefit of the school (Public Schools Act, 1868 (31 & 32 Vict. c. 118), s. 22). As to sale of advowsons held by, or in trust for, Eton and Winchester, see Ecclesiastical Commissioners Act, 1840 (3 & 4 Vict. c. 113), s. 69, as extended by Universities and College Estates Act Extension, 1860 (23 & 24 Vict. c. 59), s. 7.

(*s*) The Public Schools Act, 1868 (31 & 32 Vict. 118), defined the governing bodies, and gave them for a limited time certain powers of making statutes (ss. 6, 9—11), which were transferred to the special commissioners after 1st January, 1870, and power to make regulations for school management (s. 12). The Public Schools Act, 1869 (32 & 33 Vict. c. 58), s. 2, incorporated the governing bodies with power to hold lands without licence in mortmain.

(*t*) Public Schools Act, 1868 (31 & 32 Vict. c. 118), s. 13. The Endowed Schools (Masters) Act, 1908 (8 Edw. 7, c. 39), does not apply; see note (*d*), p. 106, *post*. If a governing body, in dismissing a headmaster, acts fairly and honestly, the Court of Chancery will not interfere (*Hayman* v. *Rugby School* (*Governors*) (1874), L. R. 18 Eq. 28); and see p. 125, *post*, as to the status of schoolmasters as officers of charities.

(*a*) The expression "boys on the foundation" is defined by Public Schools Act, 1868 (31 & 32 Vict. c. 118), s. 4. See also s. 14 (rights of parents in Harrow parish, of parents within five miles of Rugby, and of burgesses of Shrewsbury).

(*b*) *Ibid.*, s. 31. As to the chapels of schools coming within the scope of the Endowed Schools Act, see note (*f*), p. 106, *post*; as to Eton chapel and the parish of Eton, see ss. 23, 31. See also title ECCLESIASTICAL LAW, Vol. XI., p. 651.

These schools have variously received special statutory treatment not only in respect of property (*c*), but also in respect of religion (*d*), government (*e*), and other matters (*f*).

Part VIII.—Educational Charities.

SECT. 1.—*In General.*

Statutory interference with educational charities.

241. The rules of equity, and the provisions of the Charitable Trusts Acts, make no distinction between educational and other charities. But Parliament, in its education statutes, has both directly and incidentally made a number of special provisions affecting educational charities which in some cases require to be separately treated (*g*).

SECT. 2.—*Powers of the Board of Education under the Endowed Schools Acts.*

SUB-SECT. 1.—*In General.*

Nature of powers.

242. The Board of Education exercise a special jurisdiction over charities which come within the scope of the Endowed Schools Acts, 1869 to 1889 (*h*). Such charities may be reformed by the

(*c*) See note (*r*) on p. 98, *ante*.

(*d*) As to Eton, Winchester, and Westminster, see stat. (1548) 2 & 3 Edw. 6, c. 1, s. 2, and the Act of Uniformity (stat. (1662) 14 Car. 2, c. 4), s. 18 (use of Latin prayers); Roman Catholic Relief Act, 1829 (10 Geo. 4, c. 7), s. 16 (no Roman Catholic may hold office). As to Eton chapel, see p. 98, *ante*. As to advowsons, see note (*r*) on p. 98, *ante*.

(*e*) A dean may not be Provost of Eton, Warden of Winchester, or master of Charterhouse (Pluralities Act, 1850 (13 & 14 Vict. c. 98), s. 5). As to Westminster, see Public Schools Act, 1868 (31 & 32 Vict. c. 118), s. 5 (incorporation); s. 20 (miscellaneous provisions of management); amended by Public Schools Act, 1869 (32 & 33 Vict. c. 58), s. 3 (status of Dean and Chapter of Westminster saved). As to Charterhouse, see Public Schools Act, 1868 (31 & 32 Vict. c. 118), s. 29 (change of name and saving as to private Act, 30 & 31 Vict. c. viii.) As to Harrow, see Public Schools (Shrewsbury and Harrow Property) Act, 1872 (36 & 37 Vict. c. 41), ss. 2, 5 (incorporation).

(*f*) Provision exists for the possible removal from its present site of Westminster (Public Schools Act, 1868 (31 & 32 Vict. c. 118), ss. 20 (16), 32)). As to Shrewsbury, see s. 26.

(*g*) For the rules of equity relating to charities, and the provisions of the Charitable Trusts Acts, see title CHARITIES, Vol. IV., p. 101. For the Grammar Schools Act, 1840 (3 & 4 Vict. c. 77), see p. 116, *post*. For Lord Cranworth's Act, see p. 116, *post*. For further special powers of the Charity Commissioners and the Board of Education, see p. 115, *post*. For provisions in the Education Acts incidentally affecting charities, see pp. 28, 39, 40.

(*h*) The Acts are the Endowed Schools Act, 1869 (32 & 33 Vict. c. 56) (the principal Act); the Endowed Schools Act, 1873 (36 & 37 Vict. c. 87); the Endowed Schools Act, 1874 (37 & 38 Vict. c. 87); the Welsh Intermediate Education Act, 1889 (52 & 53 Vict. c. 40). The Endowed Schools (Masters) Act, 1908 (8 Edw. 7, c. 39), is not strictly one of the Endowed Schools Acts, but (s. 4) may be cited with them (see note (*d*), p. 106, *post*). For the Welsh Intermediate Education Act, 1889 (52 & 53 Vict. c. 40), and the special provisions in it modifying and extending the Endowed Schools Acts in the case of Wales, see p. 111, *post*. For the citation of the Acts as the Endowed Schools Acts, 1869—1889, see the Short Titles Act, 1896 (59 & 60 Vict. c. 14); the Welsh Intermediate Education Act, 1889 (52 & 53 Vict. c. 50), s. 1; and the Endowed Schools (Masters) Act (8 Edw. 7, c. 39), s. 4. The principal Act (Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), ss. 31 and 59) gave power to establish a

SECT. 2. Powers under the Endowed Schools Acts.

Board exercising for that purpose a wider discretion than is permitted to them in the case of other educational charities. The express object of this special jurisdiction is to render the charities in question most conducive to the advancement of the education promoted thereby, and for that object the Board may alter, and add to, existing trusts, and make new trusts; consolidate and divide charities; and deal with the constitution, rights, and powers of their governing bodies (*i*).

Power to be exercised by scheme.

The method of exercising these powers is by schemes made in accordance with a prescribed procedure and subject to prescribed rights of appeal (*k*). A scheme, when duly completed, has the same force as if it had been included in the Acts (*l*), but may be altered by an amending scheme made in accordance with and subject to the

body of special commissioners for the purpose of making schemes under the Act, and limited the duration of their jurisdiction to 31st December, 1872, giving power to extend it by Order in Council for another year. It was extended to the end of 1874 by the Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 17. By ss. 1, 6 of the Endowed Schools Act, 1874 (37 & 38 Vict. c. 87), the powers of the special commissioners were vested in the Charity Commissioners, the special commissioners were abolished, and the duration of the powers was extended for five years to the 31st December, 1879. Since that date they have been continued annually for one year under the Expiring Laws Continuance Act. The powers of the Charity Commissioners in respect of charities solely educational (including powers under the Endowed Schools Acts) are now exercised by the Board of Education; see p. 13, *ante*. For the powers under the Endowed Schools Acts (still exercised by the Charity Commissioners) to apply to educational purposes certain non-educational charities and to apportion charities partly non-educational, see pp. 104, 115, *post*.

(*i*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), ss. 9, 10, the terms of which imply that the principle of *cy-près* need not be enforced strictly. Thus endowments previously used to maintain schools in a particular parish can be converted to supplying exhibitions for the benefit of areas outside the parish (*Re St. Leonard, Shoreditch, Parochial Schools* (1884), 10 App. Cas. 304, P. C.), and the site of a school can be removed from one parish to another (*Re Hemsworth Free Grammar School and Hospital and Barnsley Grammar School* (1887), 12 App. Cas. 444, P. C.). The Acts are "highly remedial," see *per* Lord HATHERLEY, L.C., cited in note (*r*), p. 101, *post*. The preamble of the Act of 1869 must also be taken into account as indicating the principles on which the Board should act, *e.g.*, to carry out the main designs of the founder of an endowed school by putting a liberal education within the reach of all classes of children in a manner not possible without special statutory facilities. For the principles, including that of *cy-près* governing the jurisdiction of the Board of Education and the Charity Commissioners to make schemes in respect of charities in general, see note (*g*) on p. 99, *ante*, and title CHARITIES, Vol. IV., pp. 190, 302. The latter jurisdiction, generally speaking, so far as not merely inquisitorial, is the same as that of a judge in chambers, and is, therefore, subject to the principle of *cy-près*.

(*k*) For the procedure for making schemes, see p. 109, *post*; and for appeals, see p. 110, *post*. The Board of Education may insert in any scheme all provisions which they think necessary for carrying out its objects (Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 23); *e.g.*, they may insert a clause providing that questions arising under the scheme shall be referred to and determined by the Board of Education (*Re Hodgson's School* (1878), 3 App. Cas. 857, P. C. See also *R.* v. *Charity Commissioners for England and Wales*, [1897] 1 Q. B. 407, and *R.* v. *Wilson*, [1888] W. N. 12).

(*l*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 45; it is further expressly provided that persons acquiring interests or privileges in respect of an endowment or an endowed school do so subject to the conditions of any scheme made under the Act (*ibid.*, s. 55; and compare Endowed Schools Act, 1868 (31 & 32 Vict. c. 32), ss. 2, 4, 5, note (*t*), p. 102, *post*).

SECT. 2. Powers under the Endowed Schools Acts.

same provisions as an original scheme (*m*). During the continuance of the powers to make schemes under the Acts the court may not, without the consent of the Board of Education, make any new scheme with respect to an endowment subject to those powers, or appoint new trustees (*n*), and no alteration or enlargement of school premises forming part of an endowment within the scope of the Acts may be made, except by way of maintenance or repair, without the consent in writing of the Board of Education, or under the authority of a scheme (*o*).

Inquisitorial powers.

The compulsory powers which the Board of Education exercise in their jurisdiction under the Charitable Trusts Act with reference to the production of documents, the interrogation and attendance of witnesses, and with reference to evidence are applicable to their jurisdiction under the Endowed Schools Acts (*p*).

Annual report.

The Board of Education must make an annual report to His Majesty of their proceedings under the Endowed Schools Acts. The report must be laid before Parliament, and must describe all schemes not laid before Parliament which have been approved by His Majesty in Council during the year (*q*).

SUB-SECT. 2.—*Charities to which the Acts apply.*

Limitations.

243. The classes of charities to which the special powers of the Board of Education apply are limited in various ways (*r*).

Meaning of "educational endowment."

244. A charity must, to be subject to those powers, be an educational endowment within the meaning of the Acts, and educational endowment, for that purpose, means property of any kind (real, personal, or mixed) subject to charitable trusts for the purpose of education at school of boys or girls, or for the purpose of exhibitions tenable at a school or university or elsewhere, and whether applied in the shape of payments to governors, teachers, officers, scholars, or parents of scholars, or in the shape of school apparatus, or otherwise (*s*).

(*m*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 44. Provision may also be made in a scheme for its alteration by a scheme made by the Board of Education under their ordinary jurisdiction under the Charitable Trusts Act, but not so as to contravene any of the rules of the Endowed Schools Acts (*ibid.*, s. 28; and see *Re Sutton Coldfield Grammar School* (1881), 7 App. Cas. 91, P. C.; *Re Berkhamsted Grammar School*, [1908] 2 Ch. 25).

(*n*) Endowed Schools Act, 1874 (37 & 38 Vict. c. 87), s. 6.

(*o*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 55.

(*p*) *Ibid.*, s. 49. See p. 13, *ante*, and title CHARITIES, Vol. IV., p. 309.

(*q*) Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 16, as varied by Order in Council, 11th August, 1902, Statutory Rules and Orders Revised, Vol. IV., Education, England; see p. 14, *ante*.

(*r*) "I apprehend that the first intent of the legislature in framing this Act, which is a highly remedial Act, was that the commissioners should have the largest possible powers; and these general words were used lest anything which might have escaped the attention of the legislature should afterwards be found unprotected by the supervision and care of the commissioners. Having given these extensive powers, the legislature proceeded to make certain exceptions, the intention being obviously that everything not immediately in the contemplation of the legislature should not escape, and that nothing should escape except things to which the attention of the legislature was expressly directed" (*Re Meyricke Fund* (1872), 7 Ch. App. 500, *per* Lord HATHERLEY, L.C., at pp. 502, 503).

(*s*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), ss. 4, 5. For decisions

SECT. 2. Powers under the Endowed Schools Acts.

Scope of Acts.

245. The occasion of passing the principal Act was the report of the Schools Inquiry Commission made in 1867, and the scope of the Act must, it would appear, be construed with reference to the mischiefs disclosed by that report, which is expressly referred to in the preamble of the principal Act (*t*). The Board's powers, moreover in their origin were temporary, and only now exist in virtue of an annual renewal under the Expiring Laws Continuance Act (*u*). It may therefore be inferred—the inference has in fact been adopted by the Board and the Charity Commissioners—that the Board's special powers do not apply to any charity founded after the 2nd August, 1869, the date of the passing of the principal Act (*v*). Those powers are, moreover, expressly made applicable to charities founded after 2nd August, 1819, only with the consent of the governing body (*w*).

Great public schools excluded.

246. Nothing in the Endowed Schools Acts, 1869 to 1889, applies to Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby, Shrewsbury, or their endowments (*x*).

illustrating the definition, compare *Re Hemsworth Free Grammar School and Hospital and Barnsley Grammar School* (1887), 12 App. Cas. 444, P. C; *Re Hodgson's School* (1878), 3 App. Cas. 857, P. C.; *Re Meyricke Fund* (1872), 7 Ch. App. 500. An endowed school is one which is, or if not in abeyance would be, wholly or partly maintained by means of any endowment, but the mere fact that exhibitions are attached to a school does not make it an endowed school (*ibid.*, s. 6; and see *A.-G.* v. *Christ Church, Oxford* (*Dean and Chapter*), [1894] 3 Ch. 524). For the definition of exhibition, see *ibid.*, s. 7. For the application of the Acts to the Crown and the Duchy of Lancaster, see Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 4.

(*t*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56). The legislation affecting educational charities which preceded the Endowed Schools Acts needs to be considered generally in connection with those Acts; compare (1) the Grammar Schools Act, 1840 (3 & 4 Vict. c. 77) (see p. 116, *post*); (2) the Acts constituting the Charity Commissioners (for these see title CHARITIES, Vol. IV., p. 302); (3) the Endowed Schools Act, 1860 (23 & 24 Vict. c. 11) (see p. 116, *post*); (4) the Public Schools Act, 1868 (31 & 32 Vict. c. 118), and amending Acts (see p. 97, *ante*); (5) the Endowed Schools Act, 1868 (31 & 32 Vict. c. 32) (an Act to prevent the creation of vested interests pending the passing of the Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), continued in force by 38 & 39 Vict. c. 29).

(*u*) See note (*h*), p. 99, *ante*. Only the powers to make schemes are temporary, but these powers, and the provisions consequential upon them, constitute the substance of the Acts; for some of the permanent provisions, see p. 106, *post*.

(*v*) The Board's practice is supported by an opinion of the law officers of the Crown given with reference to a case submitted by the Charity Commissioners in 1899, and cited in the Forty-seventh Report of the Commissioners at p. 67.

(*w*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 14. The term "governing body" is defined in the Endowed Schools Acts, and means, generally speaking, the persons managing and controlling the endowment other than a master of the school (Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 7; and see *Re Christ's Hospital* (1889), 15 App. Cas. 172, 185, P. C.). A governing body may act through a majority of the members of the body present at a duly constituted meeting (*ibid.*, s. 54). For a case where endowments given within fifty years had been expended upon improving property given earlier, see *Re Christ's Hospital, supra*, and p. 105, *post*. A scheme of the Court of Chancery is not an original gift to charitable trusts within the meaning of s. 14 of the Act (*Ross* v. *Charity Commissioners* (1882), 7 App. Cas. 463, P. C.). The section leaves the jurisdiction of the Court of Chancery as to endowments within the fifty years entirely unaffected (*A.-G.* v. *Christ's Hospital* (*Governors*), [1896] 1 Ch. 879, 883).

(*x*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 8; and see p. 97,

SECT. 2. Powers under the Endowed Schools Acts.

Further exceptions.

247. The following classes of charities are also expressly excluded from the Acts and from the Board's powers thereunder, but not from the Endowed Schools (Masters) Act, 1908 (*y*):—(1) Any school which on the 1st January, 1869, was maintained wholly or partly out of annual voluntary contributions and had no endowment except the school premises (*z*); (2) any school (and its endowment) which, at the date of the passing of the principal Act (2nd August, 1869), was in receipt of an annual parliamentary grant, but not including any grammar school (*a*), or any school of which only one department received such a grant; (3) any school which, on the 5th August, 1873, was an elementary school as defined by the Elementary Education Act, 1870, and of which the endowments did not then exceed £100 yearly calculated upon a prescribed basis, and which was neither a grammar school nor a department of a grammar school (*b*); (4) any school (unless otherwise subject to the Acts) maintained out of an endowment the income of which is applicable, at the option of the governing body, to non-educational purposes, and that endowment (*c*); (5) any school (unless otherwise subject to the Acts) assisted by an endowment the income of which is applicable, at the option of the governing body, to some other school (*d*); (6) any endowment applicable and applied solely to the education of the ministers of any church or religious denomination, or for teaching any particular profession, and any school which is assisted by any such endowment (*e*); (7) any school which, during the six months prior to the 1st January, 1869, was used solely for the education of choristers, and its endowment, if applicable solely for the purpose of such education (*f*).

Partial exceptions.

248. The following charities are excluded from the Board's powers under the Acts to alter the constitution of the governing body, unless that body or other authority consent to the Board's jurisdiction being exercised in that regard:—(1) Any school wholly or

ante. As to what is an endowment of one of these schools, see *A.-G.* v. *Christ Church, Oxford (Dean and Chapter)*, [1894] 3 Ch. 524.

(*y*) Compare s. 3 of Endowed Schools (Masters) Act, 1908 (8 Edw. 7, c. 39), and note (*d*), p. 106, *post*. The Act, which requires masters to be in the employment of the governing body, is permanent in character, and relates to all endowed schools, except the seven great public schools, and any public elementary school.

(*z*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 8.

(*a*) *I.e.*, as defined by the Grammar Schools Act, 1840 (3 & 4 Vict. c. 77).

(*b*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 8; Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 3 (the proviso to which affords a means by which the Acts can be applied to certain of the excluded cases at the option of the governing body). These two classes of endowments, being in substance endowments for elementary education, are the subject-matter of the jurisdiction of the Board of Education under s. 75 of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75); see p. 115, *post*. A certificate of the Board of Education that a school of the former class was in receipt of a parliamentary grant, or that a school is within the latter class, is conclusive (*ibid.*, s. 75; and Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 3).

(*c*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 8 (4); and compare *Re Christ's Hospital* (1889), 15 App. Cas. 172, P. C.

(*d*) *Ibid.*, s. 8 (5).

(*e*) *Ibid.*, s. 8 (6)

(*f*) *Ibid.*, s. 8 (7).

SECT. 2. Powers under the Endowed Schools Acts.

partly maintained out of the endowment, or forming part of the foundation of any cathedral or collegiate church (in such cases the consent required is that of the dean and chapter); (2) any school of which the governing body is subject to the jurisdiction of the governing body of the Quakers, or of the congregation of Moravians; (3) any school forming part of the foundation of any college in Oxford or Cambridge (in such cases the consent of the college is required) (*g*).

Certain exhibitions excepted.

249. An exhibition forming part of the foundation of any such college is also excluded from the Board's jurisdiction under the Acts, unless the college consent, or unless the exhibition be restricted to some school or district (*h*). In the case of any exhibition which is subject to any restriction making it tenable only at a particular college or hall in any university, and is payable out of property held by the college, or by the university in trust for the college or hall (and otherwise than as the governing body of a school or as a bare trustee), a scheme abolishing the restriction cannot be made, if not less than two-thirds of the governing body of the college or hall dissent in writing (*i*).

Partial exemption in respect of religious matters.

250. Certain other classes of charities are granted a partial exemption from the Board's jurisdiction in respect of certain of the provisions of the Acts which relate to religious conditions and qualifications (*k*).

SUB-SECT. 3.—*Apportionment of Mixed Charities.*

Part of endowment outside Acts.

251. Mixed endowments are of three kinds:—

(1) Any endowment of which part is subject to trusts which do not come within the definition of an educational endowment for the purposes of the Endowed Schools Acts. A scheme dealing with such an endowment must follow detailed rules prescribed for its apportionment, unless the governing body assent to their being waived. The part of the endowment which is not within the definition must not be diverted from its trusts, and is to be ascertained by the Board of Education, subject to an appeal to the Privy Council, upon a prescribed basis of calculation. Where that part of the endowment exceeds one half, the governing body must not, in respect of its non-educational purposes, be altered by the scheme. Subject to the rules prescribed, the Board may deal with the endowment as though the whole were an educational endowment within the definition (*l*).

(*g*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 14. For the power of the Board of Education to include in schemes relating to cathedral schools, with the consent of the Ecclesiastical Commissioners, provisions for increased endowments from the Commissioners, see *ibid.*, s. 27, and title ECCLESIASTICAL LAW, Vol. XI., p. 794. See *Chester* (*Dean and Chapter*) v. *Chester* (*Bishop*) (1902), 87 L. T. 618, H. L., for a scheme for a cathedral school.

(*h*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 14.

(*i*) *Ibid.*, s. 38, which further requires the Board of Education to report the circumstances specially to Parliament.

(*k*) For provisions as to religious instruction, and exceptions therefrom, see p. 106, *post*.

(*l*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 24; further rules are therein laid down concerning (1) the application by an unaltered governing

SECT. 2. Powers under the Endowed Schools Acts.

(2) Any educational endowment coming within the definition of the Endowed Schools Acts, of which part has, by reason of having been expended subsequently to the 2nd August, 1819, on school premises or their appurtenances, become so mixed with an old endowment given before that date as to be in the opinion of the Board of Education incapable of convenient separation therefrom.

Part of endowment new but inseparable.

The whole of such an endowment is to be treated as one founded before the 2nd August, 1819, and may be dealt with accordingly, subject in certain cases to a special provision as to religious instruction (*m*).

Part of endowment new but separable.

(3) A third kind of mixed endowment is one otherwise similar to the last, but having its two parts capable of convenient separation. Where the governing body do not assent to the scheme dealing with the modern part, the scheme dealing with the old part must apportion the parts, subject to an appeal to the Privy Council, and must provide for their division, appropriation, and vesting in manner prescribed (*n*).

SUB-SECT. 4.—*Necessary Provisions in Schemes.*

252. Express directions are given to the Board of Education as to certain conditions and regulations which schemes made by them under the Acts must contain.

Privileged classes.

A scheme which abolishes or modifies the privilege or educational advantages of particular classes of persons (local, social, or other) must have due regard to the educational interests of those classes (*o*).

Extension to girls.

The benefits of endowments are, so far as conveniently may be, to be extended to girls (*p*).

Vested interests.

Certain vested interests of individual persons must be saved or compensated (*q*).

body of the educational part of the endowment, (2) accumulated funds, (3) special cases where the formula for the apportionment is not applicable. As to the method of calculating what is one half of the whole endowment, see *A.-G.* v. *Moises* (1879), Tudor on Charities and Mortmain, p. 1036. Where the trusts which are outside the scope of the Endowed Schools Acts are not educational trusts at all, the scheme apportioning the endowment will, *semble*, be made by the Charity Commissioners; see note (*h*), p. 99, *ante*.

(*m*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 25; and see *Re Christ's Hospital* (1889), 15 App. Cas. 172, P. C. For the distinction between the endowments founded before and those founded after 1819, see p. 102, *ante*. The Board's decision of the question of separability is subject to an appeal to the Privy Council (Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 25). For a special provision as to religious instruction in cases within the section, see p. 107, *post*.

(*n*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 26.

(*o*) *Ibid.*, s. 11; Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 5. A scheme may raise the tuition fees of, or impose a poverty test on, a privileged class (*Ross* v. *Charity Commissioners* (1882), 7 App. Cas. 463, P. C.; see, further, *Re Hodgson's School* (1878), 3 App. Cas. 857, P. C., and *Re Berkhamsted Grammar School*, [1908] 2 Ch. 25, for what is "due regard" to the interests of such a class). A vested interest means a legal right, and not a benefit in fact enjoyed but capable of being taken away (*Re Sutton Coldfield Grammar School* (1882), 7 App. Cas. 91, P. C.).

(*p*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 12.

(*q*) *I.e.*, interests of individual scholars, exhibitioners, teachers or officers, pensioners, and governors (*ibid.*, s. 13). As to the meaning of vested interest, see note (*o*), *supra*. The general interest of a class of persons, consisting of the inhabitants and ratepayers of a locality, to have their children taught free is

SECT. 2. Powers under the Endowed Schools Acts.

A scheme relating to an endowed school must have due regard to rights of patronage exercised by any member of its governing body in virtue of any gift or donation made by him (*a*).

Visitors.

The Board may, in any scheme, unless it be one relating to a cathedral school, transfer visitatorial powers to the Crown, and must make provision, in the case of such transfer, or in the case of any visitatorial powers being vested in the Crown at the commencement of the principal Act, for the exercise of such powers by the Board (*b*).

Teachers and officers.

Schemes must provide that all teachers and officers are in the employment of the governing body (*c*), and may be dismissed at pleasure, with or without appeal, subject to such special provisions as to notice as may be provided in the scheme or agreed upon. In the absence of any such special provision no dismissal can take effect except after not less than two months' notice and at the end of a school term, unless it be upon the ground of misconduct or other good and urgent cause (*d*).

Jurisdiction of ordinary.

A scheme must also provide that all jurisdiction of the ordinary relating to the licensing of masters in an endowed school, and all jurisdiction arising from that licensing, shall be abolished (*e*).

SUB-SECT. 5.—*Necessary Provisions respecting Religious Matters* (*f*).

Conscience clause for day scholars.

253. A scheme must provide—

I. That the parent, guardian, or person liable to maintain, or having the actual custody of, any scholar attending an endowed school as a day scholar may claim, in a prescribed manner, and obtain, the

not a vested interest within the meaning of s. 13 (*Re Shaftoe's Charity* (1878), 3 App. Cas. 872, P. C.). A teacher dismissible by resolution of the governors, but not in fact dismissed, has a vested interest within the meaning of the section (*Re Alleyn's College, Dulwich* (1875), 1 App. Cas. 68, P. C.).

(*a*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 13. Such rights of patronage are not vested interests within s. 11 or s. 13 (*Re Christ's Hospital* (1889), 15 App. Cas. 172, 183, 184, P. C.).

(*b*) *Ibid.*, s. 20. For visitatorial powers generally, see title CHARITIES, Vol. IV., p. 287.

(*c*) See note (*w*), p. 102, *ante*.

(*d*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 22; Endowed Schools (Masters) Act, 1908 (8 Edw. 7, c. 39). The latter Act was passed to alter the effects of the law as laid down in *Wright* v. *Zetland* (*Marquis*), [1908] 1 K. B. 63, C. A., and applies retrospectively to all schemes under the Endowed Schools Acts, 1869 to 1889 (with which it is citeable), and to all schemes under the Charitable Trusts Acts, 1853 to 1894, with reference to an endowed school, and to all schools otherwise exempted from the former Acts by s. 8 of the Endowed Schools Act, 1869 (32 & 33 Vict. c. 56) (see p. 103, *ante*), except the seven great public schools (see p. 103, *ante*), or any public elementary school (see p. 79, *ante*).

(*e*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 21. Degrees of any university in the United Kingdom are to be recognised as qualifying masters for office in endowed schools in cases where the trusts or other regulations require masters to have the degree of some specified university (Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 18) (a permanent provision applying whether a scheme be made or not).

(*f*) A further permanent provision, taking effect apart from any scheme, is that chapels of endowed schools fulfilling prescribed conditions, are made free from the jurisdiction of the incumbent of the parish, and are recognised for the performance of public worship, and the administration of the sacraments, according to the liturgy of the Church of England (Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 53); see also title ECCLESIASTICAL LAW, Vol. XI., p. 651.

SECT. 2. Powers under the Endowed Schools Acts.

exemption of that scholar from attending prayer or religious worship, or any lessons on a religious subject, and that the scholar shall not, by reason of the exemption, lose any advantage or emolument to which he would otherwise have been entitled from the school or endowment, except such as the scheme may expressly make dependent on the scholar learning such lessons.

II. That if a teacher, in the course of other lessons at which the scholar is present in accordance with the ordinary rules of the school, teach systematically and persistently any particular religious doctrine from the teaching of which exemption has been claimed, and if the parent, or other person as above mentioned, complain in writing to the governing body, the latter must hear the complainant and make inquiry into the facts, and, if the complaint is judged to be reasonable, take proper steps for remedying the grievance (*g*).

Boarding schools.

III. That if the parent, or other person in control, as above mentioned, of a scholar who is about to attend an endowed school, and who could otherwise only be admitted as a boarder, desires a similar exemption of the scholar, and the persons in charge of the boarding-house of the school are not willing to allow it, the governing body must make proper provision for enabling the scholar to attend the school as a day scholar and to have the exemption desired, and the scheme must contain similar regulations against loss of advantages, and for complaints by the parent or other person, as in the case already mentioned of day schools (*h*).

Notice of change in regulations.

254. A scheme which gives the governing body of an endowed school power to make regulations respecting the religious instruction given at the school must provide that no alterations in the regulations shall take effect until at least a year has expired after notice of the proposed alteration (*i*).

Certain mixed endowments.

255. Where an endowment which was founded subsequently to 1819 and has been so mixed with one founded before that date as on that account to be treated as having been founded before that date in accordance with the rules stated above relating to the apportionment of mixed endowments (*k*) appears to the Board of Education to be in value not less than the old endowment, and to have been given under the belief that the whole endowment was attached to some particular church, sect, or denomination, a scheme relating to such endowment must provide for the giving of religious instruction to the scholars belonging to such church, sect, or denomination (*l*).

Teachers and governors.

256. A scheme must provide that no person shall be disqualified for being a master in an endowed school by reason only of his

(*g*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 15.
(*h*) *Ibid.*, s. 16. A scheme should contain the exact words of the section, and should not provide that every master of a boarding-house must allow the exemption if claimed (*Re Christ's Hospital* (1889), 15 App. Cas. 172, P. C.).
(*i*) Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 11.
(*k*) See p. 104, *ante*.
(*l*) Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 8.

SECT. 2. Powers under the Endowed Schools Acts.

not being or not intending to be in holy orders (*m*), and that the religious opinions of any person, or his attendance or non-attendance at any particular form of religious worship, shall not in any way affect his qualification for membership of the governing body (*n*).

Exceptions from rules as to religious instruction.

257. The foregoing rules with respect to religious instruction and religious qualifications, other than the rule requiring a conscience clause for day scholars and the rule requiring special religious instruction in the case of certain mixed endowments, do not apply to any scheme relating to any charity within the following classes, unless the governing body, unaltered by any scheme made under the Acts, consent to their being applied:—(1) Any school which is maintained out of the endowment of, or which forms part of the foundation of, any cathedral or collegiate church; (2) any educational endowment the scholars educated by which are in the opinion of the Board of Education (subject to a prescribed right of appeal to the Privy Council) required by the express terms of the original instrument of foundation, or of the statutes or regulations made by the founder or under his authority in his lifetime or within fifty years after his death (these terms having been observed down to the commencement of the Endowed Schools Act, 1869) to learn or to be instructed according to the doctrines or formularies of any particular Church, sect, or denomination; (3) any educational endowment originally given to charitable uses since the Toleration Act, 1688 (*o*), the trusts of which require in similar manner and subject to similar conditions as in the case last mentioned that the majority of the governing body, or of the persons electing that body, or the principal teacher of the school, or the scholars educated by the endowment, shall be members of a particular Church, sect, or denomination (*p*).

Such schemes not to touch religious matters.

A scheme relating to any charity within these classes must not without the consent of the governing body make any provision respecting the religious instruction or attendance at religious worship of the scholars (except for the purpose of securing a conscience clause for day scholars) or respecting the religious opinions of the governing body or masters (*q*).

(*m*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 18.

(*n*) *Ibid.*, s. 17. But the holder for the time being of any particular office may be retained as a member of a governing body where, under the express terms of the original instrument of foundation, the holder of any particular office is a member of the governing body (Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 6; and see *Re Hodgson's School* (1878), 3 App. Cas. 857, P. C.).

(*o*) Stat. (1688) 1 Will. & Mar. c. 18.

(*p*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 19; Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 7; it is to be noted that the governing body whose consent is required is the body constituted as it would have been if no scheme had been made. As to what charities are within the second and third classes, see *Re St. Leonard, Shoreditch, Parochial Schools* (1884), 10 App. Cas. 304, P. C.; *Re Swansea Free Grammar School, and Re a Scheme under the Welsh Intermediate Education Act*, 1889, [1894] A. C. 252, P. C. For cathedral schools, see *Chester (Dean and Chapter)* v. *Chester (Bishop)* (1902), 87 L. T. 618, H. L.; and see p. 103, *ante*.

(*q*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 19. A scheme may

SUB-SECT. 6.—*Procedure and Appeals.* SECT. 2.

Powers under the Endowed Schools Acts.

258. The procedure for making schemes is prescribed in elaborate detail.

The Board of Education, as successors to the Endowed Schools Commissioners, are to begin by preparing a draft scheme. This draft they must circulate and publish in such manner as they think fit for notifying interested persons, and copies must be sent to the governing body of the endowment and the principal teacher of any school involved.

Preparation and publication of draft scheme.

Two months are allowed from the date of the publication of the draft scheme for objections or suggestions to be made (in writing) with respect to it. The governing body may submit an alternative scheme. The Board of Education, at the expiration of the two months, may hold a public inquiry into the subject-matter of the draft scheme (*r*).

Objections and inquiry.

The Board must then, after considering the objections received and the report (if any) of the inquiry, and any alternative scheme, frame a scheme (*s*). The scheme so framed must before being settled be again published with a notice allowing one month for receiving objections and suggestions, which must be in writing.

Framing scheme.

The Board, as successors to the Committee of Council on Education, must then, unless they decide to abandon or revise the scheme, settle it (*t*). The settled scheme must be published and circulated with a notice announcing that, subject to any petition appealing to the King in Council or to Parliament, the settled scheme will be laid before the King in Council (*u*).

Settlement of scheme.

In the absence of such petition the settled scheme may be approved by the King in Council, and if approved has effect from the date specified in the scheme, or, if no date be specified, from the date of the Order in Council approving it (*v*). The scheme when so approved has statutory force, and repeals and abrogates

Approval by King in Council.

not, under this rule, make particular religious views more or less necessary than formerly to qualify for membership of the governing body, but the office of rector of a parish may be made a qualification for such membership in a Church of England school (*Re Hodgson's School* (1878), 3 App. Cas. 857, P. C.).

(*r*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), ss. 32, 33, 34, 35, and Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 12. For the procedure of such public inquiry, see Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 50. The Act contains provisions as to the method of serving a governing body with notice and documents, for the purposes of the Acts, by post (*ibid.*, ss. 56, 57). For the substitution of the members and officers of the Board of Education for the commissioners and assistant commissioners, see p. 13, *ante*.

(*s*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 36.

(*t*) *Ibid.*, ss. 36, 37, as amended by Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 13. In view of the Committee of Council and the Commissioners for the purposes of the Endowed Schools Acts having been merged in the Board of Education, the Order in Council of the 7th August, 1900 (see p. 13, *ante*), provides that a "final settlement" of a scheme by the Board shall be substituted for the "approval" of the Committee of Council, and that the Board shall observe with respect to such settlement the procedure applicable formerly to the approval of that Committee.

(*u*) Endowed Schools Act, 1873 (36 & 37 Vict. c. 81), s. 13.

(*v*) *Ibid.*, s. 15; Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 45.

SECT. 2. Powers under the Endowed Schools Acts.

previous enactments and provisions and vests property without further act or assurance (*a*).

Procedure on and grounds for appeal.

259. No appeal lies to the King in Council with reference to any scheme, so far as it relates to an endowment having, immediately prior to the 2nd August, 1869, an annual income of not more than £100 calculated upon a prescribed basis (*b*). In any other case the governing body of an endowment to which the scheme relates, or any person directly affected by the scheme, may within two months after the publication of the settled scheme petition the King in Council praying that the scheme, or some part of it, be not approved by the King in Council, on the ground either (1) of any decision of the Board of Education in respect of which an appeal is expressly given to the King in Council; or (2) of the scheme not saving or making compensation for his or their vested interests as required by the Acts; or (3) of the scheme being one which is not within the scope of, or made in conformity with, the Acts; or (4) (in any case where the governing body are the petitioners) of a scheme not having due regard to any educational interests which the Acts require to be regarded on the abolition or modification of any privileges or educational advantages to which a particular class of persons are entitled (*c*).

Petitions to be heard by Judicial Committee.

The petition must be referred to and dealt with by the Judicial Committee of the Privy Council in the manner applicable to ordinary appeals to the Privy Council (*d*).

Scheme may be remitted to Board of Education.

After the recommendations of the Judicial Committee have been received the scheme may be remitted by Order in Council to the Board of Education with such declaration as the nature of the case may require, and in that case the Board of Education may either proceed to prepare a new scheme, or may amend the old one so as to bring it into conformity with the declaration contained in the Order in Council, and any scheme so amended is to be dealt with as though it were a settled scheme (*e*).

Scheme may be laid before Parliament.

Instead of remitting the scheme, the King in Council may by Order in Council direct the scheme to be laid before Parliament, and in that case the procedure will be the same as in the case of a petition appealing to Parliament against a scheme (*f*).

(*a*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), ss. 45, 46.

(*b*) *Ibid.*, s. 42, which also empowers the Board of Education to determine conclusively whether the endowment is within the limit.

(*c*) *Ibid.*, s. 39, as amended by Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 14. As to who is a person directly affected by a scheme, see *Re Christ's Hospital* (1889), 15 App. Cas. 172, P. C.; *Re Shaftoe's Charity* (1878), 3 App. Cas. 872, P. C.; *Re Colchester Grammar School*, [1898] A. C. 477, P. C. A petitioner to the Privy Council is bound by the four grounds stated, and cannot impugn the scheme on the ground of its general policy (*Re Swansea Free Grammar School, and Re a Scheme under the Welsh Intermediate Education Act*, 1889, [1894] A. C. 252, P. C.). For instances where an appeal to the Privy Council is expressly given, see Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), ss. 19 (2), 24 (2), (4), 25, and 26; and Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 8.

(*d*) Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 14; and see title COURTS, Vol. IX., pp. 33 *et seq.*, for appeals to the Privy Council generally.

(*e*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), ss. 39, 40.

(*f*) *Ibid.*, s. 39; and see p. 111, *post*, for appeals to Parliament.

SECT. 2. Powers under the Endowed Schools Acts.

Appeals to Parliament.

260. The governing body of the endowment or the council of any municipal borough directly affected by the scheme, or any twenty or more inhabitant ratepayers of any municipal borough or place so affected, may within two months after the publication of the settled scheme petition the Board praying that the scheme be laid before Parliament. In that case the scheme must be laid before Parliament for not less than two months during one session, and if either House of Parliament present an address to the Crown within those two months praying that the scheme or some part of it be not approved, no Order in Council may be made approving the scheme or the part objected to, as the case may be. In the absence of any such address the scheme may be approved by Order in Council, or any part of it to which any such address does not relate may be so approved, and the scheme, as approved, will then have effect (*g*).

SECT. 3.—*Welsh Intermediate Education.*

SUB-SECT. 1.—*In General.*

Nature and object of the system.

261. A system of secondary education has been organised in Wales and Monmouthshire by schemes made under the Endowed Schools Acts, modified and extended for the purpose by the Welsh Intermediate Education Act, 1889 (*h*). The express object of the latter Act is to make further provision for the intermediate and technical education of the inhabitants of Wales and Monmouthshire (*i*). Intermediate education, for the purposes of the Act, means in substance what is commonly called secondary education, and technical education similarly means education with a view to efficiency in industry and commerce, but excluding the teaching of the practice of any trade, industry, or employment (*k*). The mode

(*g*) Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), ss. 13, 15 (the latter section is substituted for s. 41 of the Endowed Schools Act, 1869 (32 & 33 Vict. c. 56)). The language of s. 15 of the Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), is obscure, and it is not clear if a scheme must also be laid before Parliament whenever a petition to the King in Council has been presented, even though the petition has been withdrawn or has completely failed, or the King in Council does not direct it to be laid before Parliament, but it is the practice of the Board of Education in such cases to do so.

(*h*) For the Endowed Schools Acts generally, and the citation with them of the Welsh Intermediate Education Act, 1889 (52 & 53 Vict. c. 40), see p. 99, *ante;* and s. 1 of the latter Act.

(*i*) Welsh Intermediate Education Act, 1889 (52 & 53 Vict. c. 40), s. 2.

(*k*) The expression "intermediate education" means a course of education which does not consist chiefly of elementary instruction in reading, writing, and arithmetic, but which includes instruction in Latin, Greek, the Welsh and English languages and literature, modern languages, mathematics, natural and applied science, or in some of such studies, and generally in the higher branches of knowledge; but nothing in the Act is to prevent the establishment of scholarships in higher or other elementary schools (*ibid.*, s. 17).

The expression "technical education" includes instruction in—(i.) any of the branches of science and art with respect to which grants are for the time being made by the Board of Education; (ii.) the use of tools, and modelling in clay, wood, or other material; (iii.) commercial arithmetic, commercial geography, book-keeping, and shorthand; (iv.) any other subject applicable to the purposes of agriculture, industries, trade, or commercial life and practice which may be specified in a scheme, or proposals for a scheme, of a joint education committee as a form of instruction suitable to the needs of the district; but it does not include teaching the practice of any trade, or industry, or employment (*ibid.*).

SECT. 3. Welsh Intermediate Education.

of achieving the object of the Act is the reorganisation, through schemes, of various existing endowments in separate local government areas, and the provision of new endowments out of the rates, supplemented by grants out of moneys provided by Parliament (*l*).

SUB-SECT. 2.—*Endowments and Public Funds.*

Charities applicable for the purposes of the system.

262. The endowments which can be dealt with in any such schemes are any endowments coming within the scope of the Endowed Schools Acts, and certain other classes of endowments excluded from the operation of those Acts. A scheme may deal with those elementary schools, and their endowments, which are excluded from the Acts, either by s. 75 of the Elementary Education Act, 1870 (*m*), or s. 3 of the Endowed Schools Act, 1873 (*n*). A scheme may also, with the consent of the founder or governing body, deal with any endowments founded subsequently to 1869 (*o*).

Endowment out of the rates.

263. A scheme may provide, with the consent and recommendation of the council of the county or county borough (*a*), for the endowment of the educational institutions regulated by the scheme, wholly or partly, out of contributions from the county or borough rate (*b*). Where such a provision has been made in a scheme, the council which assented to the provision must pay the amount from time to time payable out of the county fund, or in the case of a county borough, out of the borough fund or rate (*c*).

The amount of the endowment provided by the scheme from the rates must not exceed the amount of a rate of a half-penny in the pound, calculated upon a prescribed basis (*d*).

The endowment so contributed may be in the form of scholarships, or of an annual contribution of a fixed amount, or not exceeding a fixed limit (*e*).

(*l*) The special power under the Act to make schemes is temporary (as in the case of the other Endowed Schools Acts), and exists by virtue of an annual renewal under the Expiring Laws Continuance Act. For the local government areas and the apportionment of endowments between them, see p. 113, *post*.

(*m*) 33 & 34 Vict. c. 75.

(*n*) 36 & 37 Vict. c. 87.

(*o*) Welsh Intermediate Education Act, 1889 (52 & 53 Vict. c. 40), ss. 12, 13; and see p. 101, *ante*, as to the scope of the Endowed Schools Acts and the exclusion of endowments from their operation and the apportionment of mixed endowments; s. 13 of the Welsh Intermediate Education Act, 1889 (52 & 53 Vict. c. 40), applies the latter provisions to special cases of mixed endowments.

(*a*) Throughout the Welsh Intermediate Education Act, 1889 (52 & 53 Vict. c. 40), "county" or "county council" includes "county borough" or "county borough council"; see *ibid.*, s. 16.

(*b*) *Ibid.*, ss. 3 (2), (5), 4 (1), 7. The scheme may contain consequential provisions as to the mode of payment of rate contributions and other matters (*ibid.*, s. 7). For the procedure for making schemes, see p. 109, *ante*.

(*c*) *Ibid.*, ss. 8, 16 (2). The expenses of a county council under the Act are general county expenses, and are to be separately stated in the levy and collection (*ibid.*, s. 8 (2), (4)); and see title RATES AND RATING. An amending scheme is required to enable the rate contributions to be diminished (*ibid.*, s. 7 (4)).

(*d*) *Ibid.*, s. 8 (3).

(*e*) *Ibid.*, s. 7.

SECT. 3. Welsh Intermediate Education.

"Whisky money."

264. A council may also contribute as an endowment in any scheme any sums received by it in respect of the Exchequer grants, commonly known as "whisky money" (*f*).

Treasury grant.

265. A grant out of moneys provided by Parliament is to be made by the Treasury in aid of each school aided by a council and subject to a scheme. The aggregate amount of the grants made in any one year in respect of schools in any area must not exceed the amount payable under the scheme out of the rates in that area. The grants in aid of individual schools are dependent on the efficiency of the schools ascertainable by inspection in accordance with Treasury regulations, and are of such amounts as may be fixed by the regulations, subject to the limit of the aggregate amount above stated (*g*).

SUB-SECT. 3.—*Religious Instruction.*

Provisions as to religious instruction.

266. A scheme under the Welsh Intermediate Education Act, 1889, besides fulfilling the conditions as to religious instruction imposed by the Endowed Schools Acts, must, unless it be one relating to an endowment exempted from these conditions, provide further that no catechism or formulary which is distinctive of any particular religious denomination shall be taught to a day scholar at the school established or regulated by the scheme, and that the time for prayer or religious worship, or for any lesson or series of lessons on a religious subject, shall be conveniently arranged for the purpose of allowing the withdrawal of a day scholar therefrom, in accordance with s. 15 of the Endowed Schools Act, 1869 (*h*).

SUB-SECT. 4.—*Procedure.*

Joint education committee.

267. The procedure for making schemes under the Endowed Schools Acts is modified for the purposes of the Welsh Intermediate Education Act, 1889, in its initial stages.

Draft schemes.

The initiative in drafting schemes is laid upon the joint education committee which must be appointed for every county and county borough in Wales and Monmouthshire, consisting of three persons nominated by the county council or county borough council, who need not necessarily be members of the council, and two persons nominated by the Lord President of the Council (*i*). It is the duty of this body to draft and submit to the Board of Education schemes or proposals for schemes specifying the endowments within the area of the county or county borough which ought to be included in the scheme (*k*). The Board of Education, in pursuance of their

(*f*) Local Taxation (Customs and Excise) Act, 1890 (53 & 54 Vict. c. 60), s. 1 (4); and see p. 48, *ante*.

(*g*) Welsh Intermediate Education Act, 1889 (52 & 53 Vict. c. 40), s. 9. For inspection by the Central Welsh Board, see p. 114, *post*.

(*h*) *Ibid.*, s. 4 (3). For the provisions of the other Endowed Schools Acts as to religious instruction in schemes and the withdrawal of day scholars from such instruction, see p. 106, *ante*.

(*i*) *Ibid.*, s. 5, containing also rules as to the qualifications of such persons and as to vacancies. For the proceedings of the committee, see *ibid.*, s. 6.

(*k*) *Ibid.*, s. 3 (1). The Charity Commissioners exercised the power to make the schemes prior to the transfer of their educational powers to the Board of Education. For the mode of ascertaining when an endowment is

SECT. 3. Welsh Intermediate Education.

powers and duties under the Endowed Schools Acts, must deal with the draft scheme as though it were a draft scheme prepared by themselves under the Acts, or, in the case of proposals for a scheme, must prepare a draft scheme themselves, and no modifications may be made by the Board in the draft scheme or the proposals, except such as may be agreed upon with the joint education committee (*l*).

SUB-SECT. 5.—*Operation of the Act.*

Effect of schemes.

268. It will be seen that the system of education organised under the Welsh Intermediate Education Act, 1889, in substance, is created by schemes made under the Act, and not directly by the Act itself. The Act allowed a period of three years from its commencement within which each joint education committee should complete its work (*m*). Schemes have in fact been made for the area of each county council and county borough council, and they proceed on very similar lines. Each scheme set up a county governing body exercising the main functions of a governing body of an educational endowment or school. The powers of these bodies are now exercised by the local education authority for the area (*n*).

Welsh Central Board.

By identical proposals for a scheme submitted by the joint education committee for each area a central inspecting and examining body has been set up, called the Welsh Central Board for Intermediate Education, which receives an annual subsidy from the Treasury out of moneys provided by Parliament, contributions from local education authorities, and donations, and is recognised by statute as the proper body for inspecting Welsh intermediate schools on behalf of the Board of Education (*o*).

"within" an area, see Welsh Intermediate Education Act, 1889 (52 & 53 Vict. c. 40), s. 12 (1). Joint schemes may be made by several committees (*ibid.*, s. 3 (6)).

(*l*) *Ibid.*, s. 3 (3); and see p. 109, *ante*, as to the ordinary procedure of the Board under the Endowed Schools Acts; see also *ibid.*, s. 13, as to subsidiary powers of the joint education committee in dealing with the Board of Education.

(*m*) *Ibid.*, s. 11. By this section, during the continuance of the powers of the joint education committee, the ordinary powers of the Charity Commissioners for making schemes either under the Endowed Schools Acts (unmodified by the Welsh Intermediate Education Act, 1889) or under the Charitable Trusts Acts, with reference to any endowment within the scope of the Welsh Act, were suspended, subject to the consent of the Education Department to their exercise, a restriction now practically obsolete, in view of the above-mentioned union of powers of the Charity Commissioners and powers of the Education Department in the Board of Education; see p. 13, *ante*. The powers of the joint education committee are continued annually under the Expiring Laws Continuance Act.

(*n*) Education Act, 1902 (2 Edw, 7, c. 42), s. 17 (8). The schemes were made by the Charity Commissioners shortly after the passing of the Act. They provided, *inter alia*, for substantial representation of municipal authorities on the governing bodies which they established. For the transfor of the functions of county governing bodies to local education authorities, see p. 20, *ante*.

(*o*) Board of Education Act, 1899 (62 & 63 Vict. c. 33), s. 3; and see p. 10, *ante*. The Welsh Intermediate Education Act, 1889 (52 & 53 Vict. c. 40), organised for Wales an independent system of endowed secondary education not directly public in character, but having a substantial State and municipal element in the Treasury grants, and in the municipal representation and contributions. The growth since 1889 of a public system of secondary education common to both England and Wales has tended to merge the system

SECT. 4.—*Miscellaneous.*

SUB-SECT. 1.—*Provisions affecting certain Charities for Elementary Education.*

Special charities.

269. The Board of Education exercise a special jurisdiction, as successors of the Committee of Council on Education, in regard to two classes of charities, being in substance charities devoted to elementary education, which are expressly excluded from their jurisdiction under the Endowed Schools Acts.

The governing body of any such charity may frame and submit to the Board of Education a scheme respecting the charity, and the Board may approve the scheme with or without modifications. The procedure for making schemes under the Endowed Schools Acts is not requisite in the case of these charities, but the powers exercisable through, and the effect of, any such scheme are the same as in the case of a scheme under the Endowed Schools Acts (*p*).

SUB-SECT. 2.—*Conversion of Non-educational Charities to Education.*

Powers of Charity Commissioners.

270. The Charity Commissioners are expressly authorised to apply certain specified classes of charities of a non-educational character to educational purposes, but in each case only with the consent of the governing body, that is to say, charities for doles in money or in kind, or marriage portions, redemption of prisoners and captives, relief of poor prisoners for debt, loans, apprenticeship fees, advancement in life, or, in the case of charities founded in or before 1800, for any purposes that have failed altogether or become insignificant in comparison with the magnitude of the endowment. The procedure to be adopted by the Commissioners is that of a scheme under the Endowed Schools Acts declaring that the whole or any part of the charity should be applied to the advancement of education. The charity then becomes an educational endowment within the meaning of the Endowed Schools Acts, and may be dealt with by the Charity Commissioners under those Acts in the same scheme as that in which it is applied by them to educational purposes, or, when it has been applied to educational purposes, by

organised under the Welsh Act with a fully municipal system. The Technical Instruction Act, 1891 (54 & 55 Vict. c. 4) (see p. 22, *ante*), the "whisky money" (p. 48, *ante*), and the general powers under the Education Act, 1902 (2 Edw. 7, c. 42), to provide and aid secondary education, gave wider financial facilities for secondary education than were afforded by the Welsh Act, and those facilities can be and are applied to schools under the Act. Such schools also in many cases count as secondary schools under the regulations of the Board of Education, and earn the secondary schools grants. The transfer of the powers of county governing bodies constituted under the schemes to certain local education authorities by the Education Act, 1902 (2 Edw. 7, c. 42) (see p. 20, *ante*), is a further step in the direction of municipalising what is in theory a system of endowed schools. The technical distinction should, however, be noted that the rate aid contributed under the Welsh Act is secured by the schemes as a permanent endowment, and the Treasury grant is similarly permanent, whereas rate-aid under the Education Act, 1902 (2 Edw. 7, c. 42), and the secondary school grants are, in theory, only annual grants.

(*p*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 8 (3); Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 75; Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 3. As to the identity of the two classes and the method of ascertaining them, see note (*b*), p. 103, *ante*. For forms, see Encyclopædia of Forms, Vol. XVI., pp. 610, 611.

SECT. 4. Miscellaneous.

the Board of Education. Any scheme dealing with a charity made an educational endowment under the above-mentioned powers must respect the privileges of special classes of persons, and must not inclose spaces open to the public (*q*).

SUB-SECT. 3.—*Schools within the Grammar Schools Act*, 1840.

Grammar schools.

271. Under the Grammar Schools Act, 1840 (*r*), special powers were provided to enable courts of equity to reform through schemes subject to various conditions, endowed schools which come within the definition of grammar schools for the purposes of the Act. According to the existing rules of equity, grammar schools, such as were commonly founded in the reign of Edward VI., were broadly speaking, regarded as subject to trusts for instruction in Latin and Greek, and as incapable, by any *cy-près* application, of being used for less restricted instruction (*s*). The court may, under its statutory powers, enlarge the scope of the education in schools coming within the Act (*a*), and may also make other reforms, such as enlarging the class of scholars who may be admitted to the school, or uniting schools (*b*).

The powers of the court under the Grammar Schools Act cannot be exercised without the consent of the Board of Education, and are practically obsolete, as wider powers are enjoyed by the Board of Education under the Endowed Schools Acts, which appear to embrace almost all schools affected by the former Act (*c*).

SUB-SECT. 4.—*Requirement of Conscience Clause under Lord Cranworth's Act.*

Conscience clause.

272. The object of this Act (*d*) is to enable, in certain cases, scholars to be educated in an endowed school (*e*), though not

(*q*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 30. This power is not one transferred to the Board of Education; see p. 13, *ante*. Any schemes so made will be subject to the provisions of the Endowed Schools Act; see p. 99, *ante*. See *Re Charitable Gifts for Prisoners*, *Ex parte Christ's Hospital* (*Governors*) (1872), 8 Ch. App. 199, as to the powers conferred by this section.

(*r*) 3 & 4 Vict. c. 77.

(*s*) For the definition of grammar school for the purposes of the Act, see preamble and s. 25; the phrase may be summarised as meaning a foundation where Latin or Greek is required to be taught with or without other instruction. For foundations exempted, see s. 24. For some of the restrictions, see s. 10 (consent of existing masters needed to certain changes); s. 7 (jurisdiction of ordinary); ss. 3, 4, 5 (nature of instruction to be provided). For the rules of equity prior to the Act, see *A.-G.* v. *Whiteley* (1805), 11 Ves. 241; and see title CHARITIES, Vol. IV., pp. 197, 298.

(*a*) Grammar Schools Act, 1840 (3 & 4 Vict. c. 77), s. 1; and see preceding note as to the scope of the Act.

(*b*) *Ibid.*, ss. 1, 8, 9. The Act also contains rules enabling schoolmasters holding over after dismissal to be summarily ejected from schoolhouses; see note (*e*), p. 121, *post*.

(*c*) Endowed Schools Act, 1874 (37 & 38 Vict. c. 87), s. 6; and see p. 100, *ante*. For a special provision in the Endowed Schools Acts relating to such grammar schools, see p. 103, *ante*.

(*d*) The Endowed Schools Act, 1860 (23 & 24 Vict. c. 11). Though so called the Act is not citable with, nor to be construed with, the Endowed Schools Acts, 1869 to 1889; see p. 99, *ante*. Owing to the provisions for a conscience clause in those Acts (p. 106, *ante*) Lord Cranworth's Act is, in practice, largely obsolete.

(*e*) There is no definition of this term, and the definitions and limitations in the Endowed Schools Acts, 1869 to 1889 (p. 99, *ante*), do not necessarily apply.

belonging to the religious persuasion in the principles of which religious instruction is given in the school. For this purpose the trustees and governors of such a school are empowered and required to make regulations to admit such children to the benefits of the school. The regulations, however, may not authorise other religious teaching to be given in the school different from that previously afforded in it (*f*).

The Act does not apply to any school of which the instrument declaring the trusts expressly requires instruction in the principles of some particular religious persuasion to be given (*g*), nor does it apply to any grammar school within the meaning of the Grammar Schools Act, 1840, nor to any school established in connection with the National Society for promoting the education of the poor in the principles of the Established Church, nor to any institution maintained wholly by voluntary subscriptions, or partly by voluntary subscriptions and partly by school payments (*h*).

Part IX.—Facilities for Granting Land for Education.

SECT. 1.—*In General.*

273. Special statutory facilities exist for the conveyance and holding of land for educational purposes. Powers of local authorities.

The various Acts giving power to local authorities with respect to education in many cases provide such facilities specially for the purposes of these powers (*a*).

An independent set of facilities are afforded by the School Sites Acts (*b*). Under these Acts persons and bodies who might otherwise be under disabilities may convey or hold land for certain prescribed educational purposes in a manner not otherwise open to them, and, in particular, may avoid some of the requirements of the Mortmain Acts (*c*). School Sites Acts.

(*f*) Endowed Schools Act, 1860 (23 & 24 Vict. c. 11), s. 1.
(*g*) *Ibid.*, s. 1.
(*h*) *Ibid.*, s. 2.

(*a*) For local education authorities, see pp. 24, 26, *ante;* for county and county borough councils providing reformatory schools, see p. 79, *ante;* for poor law authorities, see pp. 82, 86, *ante;* for purchase of land, see title COMPULSORY PURCHASE OF LAND ETC., Vol. VI., p. 166, *et passim;* and for various forms see Encyclopædia of Forms, Vol. XVI., pp. 604—608.

(*b*) The Acts are the School Sites Act, 1841 (4 & 5 Vict. c. 38), School Sites Act, 1844 (7 & 8 Vict. c. 37), School Sites Act, 1849 (12 & 13 Vict. c. 49), School Sites Act, 1851 (14 & 15 Vict. c. 24), School Sites Act, 1852 (15 & 16 Vict. c. 49). For their citation as the School Sites Acts, see Short Titles Act, 1896 (59 & 60 Vict. c. 14), Sched. II. The general effects only of the Acts are stated in the text. For forms of conveyances under the Acts, see Encyclopædia of Forms, Vol. XVI., pp. 591—599.

(*c*) For the subject of mortmain, see title CHARITIES, Vol. IV., p. 124. It may be noted here that under the School Sites Acts (1) grants to corporations under the Act (see p. 119, *post*) are valid without a licence from the Crown [School Sites Act, 1841 (4 & 5 Vict. c. 38), s. 7; Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 1]; (2) grants under the Acts are not

SECT. 2. Grants under the School Sites Acts.

SECT. 2.—*Grants under the School Sites Acts.*

Purposes for which grants may be made.

274. The purposes for which the Acts provide facilities are the granting of land, either absolutely or for a term of years, as a site for a school for the education of poor persons, or for the residence of the schoolmaster or schoolmistress, or otherwise for the purposes of the education of such poor persons in religious and useful knowledge (*d*), or for training colleges for persons intended to be masters or mistresses of elementary schools for poor persons (*e*), or for schools or colleges (including teachers' residences) for the religious or educational training of the sons of yeomen, or tradesmen, or others, or for the theological training of candidates for holy orders, such schools and colleges being partly endowed and partly self-supporting (*f*).

Persons who may grant.

275. Power to make grants is expressly given by the Acts to (among others) any owner in fee, any life tenant jointly with the remainderman in fee or tail (if competent), a lord of a manor out of common land, a *cestui que trust* without joining any trustee having the legal estate, the guardian or committee of a lunatic or infant, and, further, various corporate or public bodies and trustees holding land in a corporate, public, or charitable capacity, such bodies or persons being specified as, among others, any corporation ecclesiastical or lay, whether sole or aggregate, and any officers, trustees, or commissioners holding land for public, ecclesiastical, parochial, charitable, or other purposes (*g*).

avoided by the death of the grantor within twelve months [School Sites Act, 1844 (7 & 8 Vict. c. 37), s. 3; School Sites Act, 1849 (12 & 13 Vict. c. 49), s. 4; Mortmain and Charitable Uses Act (51 & 52 Vict. c. 42), ss. 4 (7), 8]. As to assurances of land for the purpose of a schoolhouse for an elementary school, see Education Act, 1902 (2 Edw. 7, c. 42), s. 23 (5).

(*d*) School Sites Act, 1841 (4 & 5 Vict. c. 38), s. 2. As to what user of school premises is within these purposes, see *A.-G.* v. *Price* (1908), 24 T. L. R 761. For the statutory security that land granted shall be used for the purposes of the Acts, see p. 119, *post*.

(*e*) School Sites Act, 1849 (12 & 13 Vict. c. 49), s. 4; the power to grant in this case applies only to absolute owners and tenants in tail.

(*f*) School Sites Act, 1852 (15 & 16 Vict. c. 49). Ecclesiastical corporations may only make such grants for Church of England institutions, and other limitations are imposed as to the amount of land to be granted, and as to free gifts of land.

(*g*) School Sites Act, 1841 (4 & 5 Vict. c. 38), ss. 2, 5 and 6. If the remainderman in fee is not competent, *semble*, the life tenant may grant independently of him. S. 6 further provides for the majority of trustees, other than parochial trustees, or other such persons effectuating a grant. The transfer of the property of quarter sessions to county councils under the Local Government Act, 1888 (51 & 52 Vict. c. 41), substitutes the county council, with the consent of the Local Government Board, for the justices as the authority to exercise the power to consent to a grant of land belonging to a county, riding, or division. In the case of a grant of parochial property, the consents of the parish meeting, Local Government Board, and guardians are necessary (Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 6, 52 (1)). In the case of a grant of common land, the consent of the Board of Agriculture and Fisheries is now ordinarily required (Commons Act, 1899 (62 & 63 Vict. c. 30), s. 22; and see title COMMONS AND RIGHTS OF COMMON, Vol. IV., p. 512). For rules as to the application of purchase-money, and as to recording the extent of the land granted, in the case of grants by an ecclesiastical corporation sole, see School Sites Act, 1841 (4 & 5 Vict. c. 38), ss. 11, 13. For ecclesiastical bodies, see title ECCLESIASTICAL LAW, Vol. II., p. 794; for grants by the Chancellor of the Duchy of Lancaster, see *ibid.*, s. 3.

SECT. 2. Grants under the School Sites Acts.

In the case of grants for teachers' training colleges, the Acts give power of grant only to persons owning land in a personal capacity, in fee, or as tenants in tail (*h*).

Certain holders of benefices may make grants out of the glebe or other possessions of the benefice (*i*).

In the case of a grant of land subject to a lease, rules are provided facilitating the apportionment of liabilities, and the saving of rights under the lease (*j*), and, in the case of copyhold land, facilitating the conveyance of the freehold (*k*).

A model form for grants and leases is provided (*l*).

Amount to be granted.

276. Limits are placed in most cases upon the amount of land which may be granted under the Acts. An absolute owner may grant any quantity of land, if the grantee be a corporation (*m*). Five acres may be granted for the purpose of a teachers' training college (*n*). Not more than two acres may be granted for schools or colleges for the religious or educational training of the sons of yeomen or tradesmen or others or for the theological training of candidates for holy orders (*o*). In all other cases the limit for any donor is one acre in each parish, though any number of sites may be granted by the same donor in one parish, provided their total area does not exceed one acre (*p*).

Reverter on failure of purposes.

277. In the case of grants for the purposes specified above (other than teachers' training colleges) by the owners above mentioned not holding in a corporate, public, or charitable capacity, the land granted, or any part of it, reverts to the estate of the donor, as though the Acts had not been passed, on ceasing to be used for the purposes of the grant (*q*).

Persons who may take grants.

278. The Acts further enable persons and bodies, who might otherwise be disabled, to take and hold land for the purposes prescribed, including corporations, whether sole or aggregate, and the

(*h*) School Sites Act, 1849 (12 & 13 Vict. c. 49), s. 4.

(*i*) School Sites Act, 1844 (7 & 8 Vict. c. 37), s. 5; see title ECCLESIASTICAL LAW, Vol. XI., p. 753.

(*j*) School Sites Act, 1849 (12 & 13 Vict. c. 49), s. 1.

(*k*) *Ibid.*, s. 6.

(*l*) School Sites Act, 1841 (4 & 5 Vict. c. 38), s. 10. For forms, see Encyclopædia of Forms, Vol. XVI., pp. 591—601.

(*m*) School Sites Act, 1849 (12 & 13 Vict. c. 49), s. 5.

(*n*) *Ibid.*, s. 4.

(*o*) School Sites Act, 1852 (15 & 16 Vict. c. 49).

(*p*) School Sites Act, 1841 (4 & 5 Vict. c. 38), ss. 9, 20; School Sites Act, 1849 (12 & 13 Vict. c. 49), s. 3; School Sites Act, 1851 (14 & 15 Vict. c. 24), s. 1.

(*q*) School Sites Act, 1841 (4 & 5 Vict. c. 38), s. 2, and see *A.-G.* v. *Shadwell*, [1910] 1 Ch. 92; s. 6 (grants by corporate bodies etc.) contains no reverter clause (for a discussion of the fact and its results, compare *Hornsey District Council* v. *Smith*, [1897] 1 Ch. 843, C. A.), nor does s. 4 of the School Sites Act, 1849 (12 & 13 Vict. c. 49), with reference to grants for training colleges. For reverter in cases of grants by the Chancellor of the Duchy of Lancaster, see School Sites Act, 1841 (4 & 5 Vict. c. 38), s. 3. The land granted under the Acts is in any case secured for the purposes of the Acts by the operation of the statutes themselves, so that though trustees might be made personally liable to a public local authority for street improvements under general Acts of Parliament, the land itself could not be sold to enforce such charges (*Hornsey District Council* v. *Smith*, *supra*; and compare *Bowditch* v. *Wakefield Local Board* (1871), L. R. 6 Q. B. 567).

SECT. 2. Grants under the School Sites Acts.

minister and the churchwardens of a parish, holding to themselves and their successors (*r*).

Such grantees may sell or exchange any land so granted in order to obtain other land or improve other premises used or to be used for the purposes of their trusts (*s*).

Parliamentary building grants.

279. Where a parliamentary grant has been made (*t*) in aid of providing, altering, repairing, or equipping school premises, or a teacher's house, and the conditions providing for the inspection of the school upon which the grant is made have not been inserted in the conveyance of the site or in the trust deed, these conditions, if they have been put into writing and signed by a majority of the trustees, or, in the case of a voluntary gift, by the persons conveying, bind the trustees or managers of the school for the time being as though they had been inserted in the conveyance or trust deed, and personal covenants for the purpose are made null and void (*a*).

Trustees of schools subject to charitable trusts for the education of the poor, acting by their majority, are authorised, subject to certain conditions, to apply for a parliamentary grant to alter or repair school premises, and to assent to inspection as a condition of the grant being made, and, if the grant be made accordingly, the school is open to inspection by His Majesty's inspectors of schools (*b*).

The statutory power (*c*) of grantees to sell or exchange land granted under the School Sites Acts for other land is subject, in the case of schools erected with aid from moneys provided by Parliament, to the consent of the Board of Education. There is in addition a general rule (under the School Grants Act, 1855) that wherever any parliamentary grant has been made towards the provision, repair, or furnishing of any school premises with the consent of the trustees or holders of the legal estate, no sale, exchange, or mortgage can be validly made of the premises, subject to certain exceptions, without the consent of the Board of Education, unless the grant be repaid to the Treasury (*d*).

(*r*) School Sites Act, 1841 (4 & 5 Vict. c. 38); School Sites Act, 1844 (7 & 8 Vict. c. 37), s. 4. The effect of these sections is only given in outline. See also s. 8 of the School Sites Act, 1841 (4 & 5 Vict. c. 38), for the power of trustees of existing Church of England schools to substitute as trustees the minister and churchwardens; and *ibid.*, s. 15, curing doubts as to the vesting of the fee simple by previous grants to the minister and churchwardens. See also title ECCLESIASTICAL LAW, Vol. XI., p. 794. For the effect of the sections upon the law of mortmain, see note (*c*), p. 117, *ante*.

(*s*) School Sites Act, 1841 (4 & 5 Vict. c. 38), s. 14, which, in the case of a sale or exchange by an ecclesiastical corporation sole, makes the consent of the bishop necessary. For cases where parliamentary grants have been paid, see next paragraph.

(*t*) For the history of the central authority and parliamentary grants, see pp. 6, 15, *ante*.

(*a*) School Sites Act, 1844 (7 & 8 Vict. c. 37), s. 1.

(*b*) *Ibid.*, s. 2.

(*c*) See *supra*.

(*d*) School Sites Act, 1841 (4 & 5 Vict. c. 38), s. 14; School Grants Act, 1855 (18 & 19 Vict. c. 131), s. 1; Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 2. The School Grants Act, 1855 (18 & 19 Vict. c. 131), s. 1, requires that a memorandum of the amount of the grant should be indorsed on the title-deeds, and signed on behalf of the Treasury, and also abolishes personal obligations in regard to non-alienation. The Act does not affect purchasers for value without notice, nor does it apply in any case where

SECT. 2. Grants under the School Sites Acts.

280. No teacher appointed to any school built on land conveyed under the School Sites Acts acquires an interest for life by virtue of the appointment, but, in default of an express agreement, holds office at pleasure of the trustees (*e*).

SECT. 3.—*Technical and Industrial Institutions.*

Purposes of grants.

281. There are special statutory facilities for the acquisition and holding of land by institutions for promoting technical and industrial instruction and training (*f*). These institutions must be public in character and, subject to qualifications, open to the public (*g*).

Persons who may take.

Any persons, corporate or otherwise, including any trustees or public body, may be the governing body of such an institution, and may take and hold land for the prescribed purposes of such an institution (*h*). The Lands Clauses Acts (excluding provisions respecting compulsory powers and certain other provisions) are incorporated as part of the facilities (*i*). Conveyances may be made to the governing body or to a trustee for them, and by way of sale, exchange, gift, or for a rentcharge; and a conveyance by a person having an equitable estate operates to pass any bare outstanding legal estate vested in a trustee (*k*).

Limited owners.

Conveyances by limited owners for less than a full consideration are subject to certain restrictions as to the amount of land to be conveyed, and the consent of remaindermen or of the High Court (*l*).

Disposal of land.

Facilities are likewise provided for the disposal of land so acquired, and the application of the proceeds (*m*).

Mortmain.

Such institutions are also granted certain exemptions from the Mortmain Acts (*n*).

a grant was made before the Act, and the Committee of Council (p. 9, *ante*) had obtained no personal undertaking not to alienate from the trustees or holders of the legal estate.

(*e*) School Sites Act, 1841 (4 & 5 Vict. c. 38), s. 17. For other rules in connection with the appointment of teachers, see p. 106, *ante*. S. 18 of the Act gives a summary remedy to any manager of a school by application to justices for the ejectment of any teacher who holds a house by virtue of his office and refuses to quit on being dismissed or otherwise ceasing to hold the office. The section applies to any schools, whether conveyed under the School Sites Act or not, including public elementary schools provided by a local education authority (Elementary Education Act, 1870 (33 & 34 Vict. c. 75), s. 86; it does not apply to schools within the scope of the Grammar Schools Act, 1840 (3 & 4 Vict. c. 77) (see p. 16, *ante*), which, however, contains a very similar provision (s. 19). A similar provision applicable to all charities is contained in the Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), s. 13.

(*f*) Technical and Industrial Institutions Act, 1892 (55 & 56 Vict. c. 29), s. 2, defining in detail the purposes for which grants may be made. These purposes, *semble*, are not enlarged by Sched. III. (11) of the Education Act, 1902 (2 Edw. 7, c. 42). As to the operation of the Act, see *Re Stanley's Trust Deed, Stanley* v. *A.-G.* (1910), 26 T. L. R. 365.

(*g*) Technical and Industrial Institutions Act, 1892 (55 & 56 Vict. c. 29), s. 8.

(*h*) *Ibid.*, s. 3.

(*i*) *Ibid.*, s. 4. See title COMPULSORY PURCHASE OF LAND ETC., Vol. VI., p. 56.

(*k*) *Ibid.*, ss. 5, 6.

(*l*) *Ibid.*, s. 7.

(*m*) *Ibid.*, s. 9.

(*n*) *Ibid.*, s. 10; and see title CHARITIES, Vol. IV., pp. 137, 138.

Part X.—Schoolmasters and Teachers.

SECT. 1.

In General.

SECT. 1.—*In General.*

Law affecting schoolmasters.

282. The statutory provisions which regulate the conduct of schools by public local authorities, and the jurisdiction of certain central authorities over charitable foundations, in many respects affect incidentally schoolmasters and other teachers (*a*). Various other rules which deal directly with the teaching profession require separate treatment. There are, for instance, certain common law rules arising out of the contract to educate, and the status of the teacher as a person *in loco parentis*, which affect teachers, especially those of private, or proprietary, schools (*b*). The contract of employment between teachers and those who appoint them does not involve any principles different from other cases of the relation of master and servant, but there are some rules of equity relating to officers of charities which, in spite of the reorganisation of so many educational endowments under the statutes above referred to, may still be of importance to teachers in schools (*c*). Other provisions specially affecting teachers are the facilities for retaining in the profession students who have been aided by the State in preparing themselves for it (*d*), the scheme for organising the teaching profession as a whole through a teachers' registration council (*e*), and the State-aided pension scheme for teachers certificated by the Board of Education (*f*).

SECT. 2.—*Common Law Rules.*

SUB-SECT. 1.—*The Contract to Educate.*

Position of schoolmaster.

283. The relations between parent and schoolmaster are governed by the terms (express or implied) of the contract for the education of the child (*g*). There is an implied contract that the master shall continue to educate the child so long as the child's conduct does not warrant his expulsion from the school, and expulsion must not

(*a*) The ordinary rule in the case of servants and officers of a local authority appears to be that they hold office at the pleasure of the authority, subject to the terms of the special contract of employment (see titles LOCAL GOVERNMENT; MASTER AND SERVANT), and it is expressly so provided in the case of a teacher in a public elementary school provided by a local education authority (see p. 20, *ante*). For the appointment and status of teachers in public elementary schools not provided by a local education authority, see pp. 36, 38, *ante*; for the indirect control of the Board of Education over the teaching profession through the regulations for Exchequer grants-in-aid, see p. 9, *ante*; for provisions affecting teachers in the Acts relating to educational charities, see pp. 106, 108, *ante*.

(*b*) For forms of agreements etc. as to teachers, see Encyclopædia of Forms, Vol. XVI., pp. 623 *et seq.*

(*c*) See p. 125, *post*.

(*d*) See p. 127, *post*.

(*e*) See p. 127, *post*.

(*f*) See p. 127, *post*.

(*g*) For proof of contract by school prospectus, see *Williams* v. *Stoughton* (1817), 2 Stark. 292; *Clay* v. *Crofts* (1851), 20 L. J. (EX.) 361; *Edgar* v. *Blick* (1816), 1 Stark. 464 (stamp unnecessary); *Darnell* v. *Tratt* (1825), 2 C. & P. 82; *Clements* v. *May* (1836), 7 C. & P. 678. See title CONTRACT, Vol. VII., p. 536. In the case of a public elementary school, the attendance of a child being compulsory under statutory rules, no promise to pay fees can be implied merely from such attendance, and, *semble*, no contractual relation can be implied therefrom

take place except upon reasonable grounds and in the honest exercise of the schoolmaster's discretion (*h*).

In loco parentis.

284. The master is *in loco parentis;* the parent delegates to him all his own authority over the child, so far as it is necessary for the child's welfare (*i*), though this delegation is revocable (*k*). The parent further undertakes that the master shall be at liberty to enforce with regard to the child the rules of the school, or at all events such rules as are known to him and to which he has expressly or impliedly agreed (*l*). The master is bound to take such care of his pupils as a careful father would take of his children (*m*).

Notice before removal of pupil.

285. The contract sometimes expressly provides that fees must be paid in advance (*n*), sometimes that either a term's notice must be given or a term's fees be paid in the event of the removal of a pupil. In the latter case, if no notice be given, the master can sue for the fees as a sum payable for non-performance of the contract (*a*). If the contract provides for a term's notice in case of removal, but makes no stipulation for payment of a term's fees in default of notice, the schoolmaster is entitled to recover only lost profits if the parent removes his child without notice (*b*). Where the removal is merely temporary, or where the child is absent for a term through illness, the parent is not liable in the absence of special circumstances (*c*). In cases of expulsion for good cause, the schoolmaster is entitled to the whole term's fees (*d*).

Money paid.

The schoolmaster cannot recover from the parent sums spent without authority upon the pupil's behalf. There is no general authority to supply clothing to the pupil without the parent's sanction (*e*).

Scholarship.

286. The mere announcement of a scholarship examination does not result in a contract upon which the schoolmaster can be sued

between parent and schoolmaster or school authority (*London School Board* v. *Wright* (1884), 12 Q. B. D. 578, C. A.; and see note (*e*), p. 31, *ante*. The statements in sub-s. 1, *supra*, are equally applicable in cases where the contract is between the parent and the governors of a school.

(*h*) *Fitzgerald* v. *Northcote* (1865), 4 F. & F. 656, *per* COCKBURN, C.J., at p. 685.

(*i*) *Fitzgerald* v. *Northcote*, *supra*, *per* COCKBURN, C.J., at p. 689, and see *per* Lord ALVERSTONE, C.J., in *Goldney* v. *King* (1910), *Times*, 7th February, 1910.

(*k*) See *Price* v. *Wilkins* (1888), 58 L. T. 680; compare *R.* v. *Barnardo* (1890), 24 Q. B. D. 283, C.A.

(*l*) *Price* v. *Wilkins* (1888), 58 L. T. 680, *per* WILLS, J., at p. 682. If the parent breaks the contract, the schoolmaster may refuse to complete his part of it, and may sue for fees due (*ibid.*). See also *Goldney* v. *King*, *supra*. As to the parent's knowledge of the rules, see *Mansell* v. *Griffin*, [1908] 1 K. B. 160, *per* WALTON, J., at p. 169, and also at p. 947, C. A..

(*m*) *Williams* v. *Eady* (1893), 10 T. L. R. 41, C. A., a case of an action in tort for negligence brought by a pupil against his master; compare as to negligence in the conduct of schools, note (*h*), p. 39, *ante;* and see titles NEGLIGENCE; TORT.

(*n*) See *Jones* v. *Turner* (1891), 7 T. L. R. 421.

(*a*) *Lennssen* v. *Thornton* (1887), 3 T. L. R. 657; see *Eardly* v. *Price* (1806), 2 Bos. & P. (N. R.) 333, discussed in *Fewings* v. *Tisdal* (1847), 1 Exch. 295, 298; and compare *Herring* v. *Boyle* (1834), 1 Cr. M. & R. 377.

(*b*) *Denman* v. *Winstanley* (1887), 4 T. L. R. 127; compare *Collins* v. *Price* (1828), 5 Bing. 132, where illness commencing after the commencement of the term was held not to excuse payment of the terms' fees.

(*c*) *Simeon* v. *Watson* (1877), 46 L. J. (Q. B.) 679, following *Boast* v. *Firth* (1868), L. R. 4 C. P. 1.

(*d*) *Price* v. *Wilkins* (1888), 58 L. T. 680.

(*e*) *Clements* v. *Williams* (1837), 8 C. & P. 58.

SECT. 2. Common Law Rules.

by the competitor who obtains most marks. If a scholarship is offered to "the candidate who passes best," he must nevertheless pass to the satisfaction of his examiners (*f*).

SUB-SECT. 2.—*Power to Punish Pupils.*

Punishment.

287. For purposes of correction the schoolmaster (who in this respect represents the parent, and is the delegate of the parental authority) may inflict moderate and reasonable punishment. If it be administered to gratify passion or rage, or with an instrument which is unfitted for the purpose, and dangerous to life or limb, or if it be excessive in nature or degree, or protracted beyond the pupil's powers of endurance, the punishment is unlawful (*g*).

Unlawful punishment may make the master liable to criminal proceedings for assault (or even, if the pupil dies, for murder or manslaughter (*h*)), and to a civil action for damages also (*i*).

The power to inflict moderate and reasonable corporal punishment may be delegated to an assistant master, or to a prefect or monitor (*k*).

Punishment may be inflicted for offences committed not only within the school precincts, but also on the way to or from school (*l*).

The master has power to detain a pupil by way of reasonable punishment for disobedience (*m*). But the parent has a remedy by *habeas corpus* if the pupil be detained against the parent's wish (*n*).

A headmaster has authority to expel any pupil whose conduct is such that he could not any longer be permitted to remain without danger to the school, but such authority must be exercised honestly and reasonably, and not wantonly or capriciously (*o*).

(*f*) *Rooke* v. *Dawson*, [1895] 1 Ch. 480; compare *Spencer* v. *Harding* (1870), L. R. 5 C. P. 561. See title CONTRACT, Vol. VII., p. 346.

(*g*) *R.* v. *Hopley* (1860), 2 F. & F. 202, *per* COCKBURN, C.J., at p. 206. Caning a pupil attending a public elementary school on the hand is not in itself criminal if the punishment is otherwise reasonable (*Gardner* v. *Bygrave* (1889), 6 T. L. R. 23). For a case of accidental injury by caning the hand, see *Scorgie* v. *Lawrie* (1883), 10 R. (Ct. of Sess.) 610. As to what part of the body may be struck, see *Gardner* v. *Bygrave* (1889), as reported 53 J. P. 743, *per* MATHEW, J.

(*h*) See title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 577—578. The master's power of inflicting punishment received statutory recognition in the Children Act, 1908 (8 Edw. 7, c. 67), s. 37.

(*i*) See title TRESPASS.

(*k*) *Re Basingstoke School* (1877), 41 J. P. 118. As to public elementary schools, where there may be special regulations, see *Mansell* v. *Griffin*, [1908] 1 K. B 160, *per* PHILLIMORE, J., at p. 166, and compare also *ibid.*, at p. 947, C. A.

(*l*) *Cleary* v. *Booth*, [1893] 1 Q. B. 465.

(*m*) *Fitzgerald* v. *Northcote* (1865), 4 F. & F. 656, 663, n. (a), and see note (*i*), p. 123, *ante*. In the case of a pupil attending a public elementary school under the statutory rules relating to compulsory school attendance (see p. 58, *ante*), detention beyond the period of attendance required by the bye-laws is not justified by those rules, and where such detention was enforced by a schoolmaster as a punishment for not obeying a direction to study at home (a direction equally not justified by the statutory rules), it was held that the detention could not, in the circumstances, be treated as a matter of school discipline but was an assault (*Hunter* v. *Johnson* (1884), 13 Q. B. D. 225).

(*n*) *Price* v. *Wilkins* (1888), 58 L. T. 680, *per* WILLS, J., at p. 682; and see *Hunter* v. *Johnson*, *supra*.

(*o*) *Fitzgerald* v. *Northcote* (1865), 4 F. & F. 656, *per* COCKBURN, C.J., at p. 690 followed in *Hutt* v. *Haileybury College (Governors)* (1888), 4 T. L. R. 623.

SECT. 3. *Schoolmasters as Officers of Charities.*

SECT. 3. Schoolmasters as Officers of Charities.

Charity schools.

288. The appointment and dismissal of a schoolmaster ordinarily depends upon the general rules governing the contractual relations beween master and servant (*p*). But where the school is a charitable foundation a schoolmaster may have additional rights and remedies in equity as an officer of a charity (*q*). The effect of the statutory jurisdiction of the Charity Commissioners and the Board of Education over charities is in some cases to render the rules and jurisdiction of courts of equity to some extent inoperative in practice, especially in the case of charities coming within the categories of the Endowed Schools Acts (*r*). Apart, however, from such special circumstances as may arise from that jurisdiction, the usual rules relating to charities apply to a schoolmaster who is an officer of a charity.

Status of master.

289. The status of such a schoolmaster will depend upon the terms of the trust deed or other instrument regulating the charity. He may, according to the terms of the trust, be appointed for life (*a*), or during pleasure (*b*), or otherwise (*c*).

A bond by which a schoolmaster undertakes to resign in specified circumstances may be required as a condition of his appointment, but must not be corruptly used (*d*).

(*p*) Equity will not compel a master to retain in his employment a servant whom he wishes to dismiss, but will leave the servant, if wrongfully dismissed, to his remedy at law in damages (*Stocker* v. *Brockelbank* (1851), 3 Mac. & G. 250; *Johnson* v. *Shrewsbury and Birmingham Rail. Co.* (1853), 3 De G. M. & G. 914, C. A.; *Lane* v. *Norman* (1891), 66 L. T. 83); and see, generally, titles INJUNCTION; MASTER AND SERVANT. See for formation of contract between schoolmaster and governing body, *Powell* v. *Lee* (1908), 99 L. T. 284.

(*q*) The court has a general equitable jurisdiction over charities to secure their conduct in accordance with the trusts, and an officer of a charity, either as trustee or beneficiary, may invoke its aid by injunction to prevent a breach of trust (*Willis* v. *Childe* (1851), 13 Beav. 117; *Daugars* v. *Rivaz* (1860), 28 Beav. 233; *Benthall* v. *Kilmorey* (*Earl*) (1883), 25 Ch. D. 39, C. A.; *Lane* v. *Norman*, *supra*; and see cases in notes following). For the subject fully treated, see title CHARITIES, Vol. IV., pp. 247 *et seq.*, and pp. 294 *et seq.*

(*r*) See title CHARITIES, Vol. IV., p. 314, for the powers of the Charity Commissioners and the Board of Education under the Charitable Trusts Acts to authorise the removal of schoolmasters and other officers of charities; and see *ibid.*, pp. 310 *et seq.*, as to actions by officers of charities requiring the consent of the Commissioners or that Board under the Acts. For cases within the Endowed Schools Acts, and especially the Endowed Schools (Masters) Act, 1908 (8 Edw. 7, c. 39), see p. 106, *ante*.

(*a*) *Re Chipping Sodbury Free Grammar School* (1829), 8 L. J. (O. S.) (CH.) 13; *Re Phillips's Charity, Ex parte Newman* (1845), 9 Jur. 959. As to his having a "vested interest" in his office, see *A.-G.* v. *Louth Free School* (*Warden etc.*) (1851), 14 Beav. 201; *Re Alleyn's College, Dulwich* (1876), 1 App. Cas. 68, P. C. For the treatment of vested interests in schemes under the Endowed Schools Acts, see p. 105, *ante*.

(*b*) *R.* v. *Darlington School* (*Governors*) (1844), 6 Q. B. 682.

(*c*) In *R.* v. *Manchester, Sheffield and Lincolnshire Rail. Co.* (1854), 4 E. & B. 88, the master's interest in the schoolhouse was held to be not greater than as tenant for a year or from year to year for the purposes of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), ss. 68, 121.

(*d*) *Legh* v. *Lewis* (1801), 1 East, 391 (bond taken by patron); but see *Re Royston Free Grammar School* (1839), 2 Beav. 228 (bond improperly taken by trustees); see also *Fisher* v. *Jackson*, [1891] 2 Ch. 84, 101.

SECT. 3. Schoolmasters as Officers of Charities.

The right to appoint a schoolmaster of a charitable foundation depends upon the trusts. In the absence of specific direction it may belong to the founder or his heirs (*e*), or to a visitor (*f*); it may conceivably be alienated (*g*). The right must be exercised in the manner, if any, prescribed by the trusts (*h*), and must result in the appointment of a person qualified under the trusts (*i*).

Similarly, the right to dismiss is subject to the trusts, and must be exercised in the proper form (*k*). Misconduct (*l*), neglect of scholars (*m*), neglect of prescribed duties (*n*), or the holding of other office incompatible with, or involving neglect of, his mastership (*o*) would be good grounds for dismissing a schoolmaster (*p*).

The power to appoint and dismiss in such cases must not be exercised oppressively or from any corrupt or indirect motive (*q*), but *bonâ fide* and upon reasonable grounds, in which case it will not be interfered with (*r*).

An appointment or dismissal which for any of the foregoing reasons is irregular may be restrained by injunction (*s*); but where

(*e*) See *A.-G.* v. *Black* (1805), 11 Ves. 191 (failure of founder and heirs).

(*f*) See *Legh* v. *Lewis* (1801), 1 East, 391. For powers of visitors see title CHARITIES, Vol. IV., pp. 291 *et seq.*

(*g*) *A.-G.* v. *Brentwood School* (*Master*) (1833), 1 My. & K. 376; 3 B. & Ad. 59; *A.-G.* v. *Boucherett* (1858), 25 Beav. 116.

(*h*) Where trustees appoint, a majority may make the appointment (*Withnell* v. *Gartham* (1795), 6 Term Rep. 388) where such usage has prevailed (*Wilkinson* v. *Malin* (1832), 2 Cr. & J. 636). See *Re Butterwick Free School* (1851), 15 Jur. 913. A master appointed by trustees *de facto* in control of a school will not after many years of office have his appointment, although not duly made, questioned, save on grounds of misconduct (*A.-G.* v. *Hartley* (1820), 2 Jac. & W. 353); compare *Foley* v. *Wontner* (1820), 2 Jac. & W. 245.

(*i*) *A.-G.* v. *Wyeliffe* (1748), 1 Ves. Sen. 80 (master to be in priest's orders). The schoolmaster of a Church of England school should be a member of that Church; but this is not indispensable. The appointment of a Dissenter would not be a breach of trust, but the circumstances must be peculiar to justify it (*A.-G.* v. *Clifton* (1863), 32 Beav. 596). Where trustees had power to appoint subject to the approval of the lord of the manor, appointment of the lord himself as headmaster was held inconsistent with the trusts (*Re Risley School* (1830), 8 L. J. (o. s.) (CH.) 129).

(*k*) *Wilkinson* v. *Malin*, *supra*, at pp. 656-7; *Re Alleyn's College*, *Dulwich* (1876), 1 App. Cas. 68, P. C.; *Lane* v. *Norman* (1891), 61 L. J. (CH.) 149; *Fisher* v. *Jackson*, [1891] 2 Ch. 84; see also *Ryan* v. *Jenkinson* (1855), 25 L. J. (Q. B.) 11. A majority may dismiss, subject to the views of the minority being heard (*Fisher* v. *Jackson*, *supra*, at p. 94). A headmaster appointed for life is irremovable as long as he acts with propriety (*Re Chipping Sodbury Free Grammar-School* (1829), 8 L. J. (o. s.) (CH.) 13).

(*l*) See judgment in *Re Phillips's Charity*, *Ex parte Newman* (1845), 9 Jur. 959. The charge against him ought to be specifically made in writing (*ibid.*); see *R.* v. *Darlington School* (*Governors*) (1844), 6 Q. B. 682, discussed in *Dean* v. *Bennett* (1870), 6 Ch. App 489, at pp. 494-5. He has a right to be heard in his defence before removal (*Doe* d. *Thanet* (*Earl*) v. *Gartham* (1823), 8 Moore (C. P.), 368; *Lane* v. *Norman*, *supra*; *Fisher* v. *Jackson*, *supra*).

(*m*) *Doe* d. *Coyle* v. *Cole* (1834), 6 C. & P. 359.

(*n*) *A.-G.* v. *Coopers' Co.* (1812), 19 Ves. 187; but apparently not for the mere misunderstanding of duty (*ibid.*, at p. 192).

(*o*) *A.-G.* v. *Hartley* (1820), 2 Jac. & W. 353.

(*p*) And see the common law rules under title MASTER AND SERVANT; see also *Bowers* v. *Young* (1904), 48 Sol. Jo. 733.

(*q*) *R.* v. *Darlington School* (*Governors*), *supra*; *Re Buxton School*, *Ex parte Holland* (1847), 11 Jur. 581; see *Dummer* v. *Chippenham Corporation* (1807), 14 Ves. 245, 252 (corrupt act of corporation); compare *Doe* d. *Childe* v. *Wills* (1850), 5 Exch. 894.

(*r*) *Re Fremington School*, *Ex parte Ward* (1847), 11 Jur. 421.

(*s*) See cases cited in note (*q*), p. 125, *ante*. As to whether the consent of the

visitatorial jurisdiction exists, the court will not interfere to try the master's right to his office, save where there is an express trust (*t*).

SECT. 3. Schoolmasters as Officers of Charities.

SECT. 4.—*Candidates for the Teaching Profession.*

Contracts.

290. A candidate for the teaching profession may, notwithstanding that he is an infant, bind himself, subject to prescribed conditions, in consideration of any grants made by the Board of Education in respect of his maintenance, education, and training, to complete any specified course of education or training, and subsequently to follow the profession of teacher for any period and in any manner specified and, in default, to repay to the Board any specified proportion of the grants so made (*a*).

SECT. 5.—*Registration of Teachers.*

Registration council.

291. A registration council, representative of the teaching profession, may be constituted by Order in Council with the duty of forming and keeping a register of teachers who satisfy the conditions imposed by the council and apply to be registered. The register is to contain the names and addresses of all registered teachers in alphabetical order in one column, with the date of registration, and such further statement of their attainments, training, and experience, as the council determine (*b*).

SECT. 6.—*Pension Scheme for Certificated Teachers.*

Scope of pension schemes.

292. A statutory scheme of pensions exists for the benefit of teachers certificated by the Board of Education for service in public elementary schools (*c*). The scheme is worked out in great detail, partly in the statute authorising it, and partly by rules made jointly

Charity Commissioners is required for such an action, see *Rendall* v. *Blair* (1890), 45 Ch. D. 139, C. A.; *Rooke* v. *Dawson*, [1895] 1 Ch. 480; and title CHARITIES, Vol. IV., p. 310. A properly dismissed schoolmaster may be restrained by injunction from intermeddling with the school or retaining possession of the schoolhouse; see *Holme* v. *Guy* (1877), 5 Ch. D. 901; but ejectment cannot be maintained against him until his interest therein is determined (*Doe* d. *Thanet* (*Earl*) v. *Gartham* (1823), 8 Moore (C. P.), 368).

(*t*) *A.-G.* v. *Magdalen College, Oxford* (1847), 10 Beav. 402; *Whiston* v. *Rochester* (*Dean and Chapter*) (1849), 7 Hare, 532; *Willis* v. *Childe* (1851), 13 Beav. 117. And see title CHARITIES, Vol. IV., pp. 287—294 (nature of visitatorial power), pp. 299-300 (control of the court over visitors).

(*a*) Education (Administrative Provisions) Act, 1909 (9 Edw. 7, c. 29), s. 4.

(*b*) Education (Administrative Provisions) Act, 1907 (7 Edw. 7, c. 43), s. 16, repealing s. 4 (a) of the Board of Education Act, 1899 (62 & 63 Vict. c. 33), which imposed upon the Consultative Committee of the Board of Education (see p. 8, *ante*) the duty of forming such a register. By Order in Council made under s. 4 (a) of the latter Act, a teachers' registration council was in fact established. S. 16 (4), (5) of the first-named Act gives power by Order in Council to dissolve this council after transferring its property to a new council. Any Order made under the section may be revoked or amended by a subsequent Order. No Order has yet been made establishing a new registration council.

(*c*) Individual local authorities have also instituted pension schemes under special Acts; see Education Act, 1902 (2 Edw. 7, c. 42), Sched. II. (20), for the power to admit to such schemes officers transferred under the Act. For a case of a teacher seeking to recover his contributions to a voluntary fund established by agreement by a school board, see *Phillips* v. *London School Board*, *Cockerton* v. *Same*, [1898] 2 Q. B. 447, C. A.

SECT. 6. Pension Scheme for Certificated Teachers.

by the Treasury and the Board of Education under statutory authority (*d*). All teachers certificated since the 1st April, 1899, are subject to the scheme and its provisions. Teachers certificated before that date were given an option to accept the scheme within a limited time from that date, and upon so accepting it they became subject to it, with certain minor modifications. Teachers already certificated before that date who did not duly accept the scheme are unaffected by it (*e*). The following statement is a summary of its main features.

Condition of certificate.

293. No teacher may be certificated in future unless the Board of Education are satisfied as to his physical capacity. Certificates of all teachers coming within the scheme expire at the age of sixty-five, unless they are renewed by the Board for a limited time on account of special fitness (*f*).

Three kinds of pensions.

The scheme established three kinds of pensions—an annuity payable out of the Deferred Annuity Fund (a fund made up of annual contributions of the teachers), a superannuation allowance payable out of moneys provided by Parliament, and a disablement allowance also payable out of moneys provided by Parliament. No pension under the scheme can be charged or assigned, or pass to a trustee in bankruptcy (*g*).

Recorded service.

The benefits of the scheme are further dependent upon a teacher serving in certain capacities, namely, either as a certificated teacher in a public elementary school, or as a teacher in a training college, or in certain other capacities connected with public elementary schools, or as a teacher in a certified reformatory or industrial school, such service being called recorded service (*h*).

Teachers' contributions.

294. Teachers to whom the scheme applies must during recorded service make annual contributions to the Deferred Annuity Fund of £3 in case of men, and of £2 in case of women, or of such higher sums as the Treasury, subject to statutory conditions, may direct, according to the average scale of salaries for the time being (*i*).

Annuity.

The return for these contributions is an annuity commencing at

(*d*) Elementary School Teachers' (Superannuation) Act, 1898 (61 & 62 Vict. c. 57). "Prescribed," which is used throughout the Act, in place of detailed particulars, means prescribed by rules under the Act (*ibid.*, ss. 6, 11). A discretionary grant of pensions by the Board of Education was authorised by the Code (see p. 10, *ante*) for teachers certificated before May 9th, 1862, out of moneys provided by Parliament (see *ibid.*, s. 5 (3)). The grant of certificates to teachers by the Board of Education is an executive function, based upon the Code, but subject to the rules imposed by the Act. April 1st, 1899, is the date of the commencement of the Act.

(*e*) *Ibid.*, ss. 1, 5

(*f*) *Ibid.*, s. 1; and see s. 2 (b) for a modification in the case of existing teachers.

(*g*) *Ibid.*, s. 9 (2).

(*h*) *Ibid.*, s. 1; and see especially, sub-s. 5. As to reformatory and industrial schools, see p. 70, *ante;* as to other institutions, see pp. 10, 29, *ante.* For the effect of bankruptcy on pensions, see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 191.

(*i*) *Ibid.*, s. 1 (2) (b), (3), (4). These sums are now (1910) fixed at £3 10*s.* for men, and £2 8*s.* for women.

the age of sixty-five, out of the Deferred Annuity Fund, of an amount calculated according to statutory tables framed upon an actuarial basis so as to secure the fund from loss (*a*).

The Deferred Annuity Fund is managed by the National Debt Commissioners (*b*).

Employers of teachers may deduct the amount of their contributions from their salaries and pay it to the Fund (*c*).

Superannuation allowance.

295. The superannuation allowance is a pension of 10*s.* a year for each year of recorded service, payable at the age of sixty-five out of moneys provided by Parliament, upon condition that the contributions to the Deferred Annuity Fund for the purpose of the above-mentioned annuity have been duly paid, and that the teacher has served in recorded service half the time since he became certificated (*d*). An augmentation of the sum of 10*s.* is permitted in the case of teachers certificated prior to the 1st April, 1899, in respect of recorded service before that date (*e*). A superannuation allowance is revocable for misconduct (*f*).

Disablement allowance.

An allowance called a disablement allowance, payable by the Treasury out of moneys provided by Parliament, may be made to any teacher who has become permanently incapable, owing to infirmity of mind or body, of being an efficient teacher in a public elementary school, and who has served in recorded service not less than ten years and not less than half the time since he became certificated (*g*). The allowance must not exceed, for ten complete years of recorded service, in the case of a man £20, and in the case of a woman £15, with an addition, for each additional complete year, of £1 in the case of a man, and of 13*s.* 4*d.* in the case of a woman. The allowance must not, in any case, exceed the amount which the teacher might obtain from an annuity and superannuation allowance by continuing to serve till the age of sixty-five (*h*). A person having a disablement allowance does not, at sixty-five, get also an annuity or a superannuation allowance (*i*).

A disablement allowance is reconsidered from time to time by the Treasury (*k*).

A person may be disqualified for a disablement allowance by misconduct causing or increasing his infirmity, by marriage, or by ceasing to be in need of it (*l*).

(*a*) Elementary School Teachers (Superannuation) Act, 1898 (61 & 62 Vict. c. 57), s. 1 (2) (c), s. 4. Where a certificate is renewed after sixty-five, the pension begins on its expiration.
(*b*) *Ibid.*, s. 3.
(*c*) *Ibid.*, s. 3 (1).
(*d*) *Ibid.*, s. 1 (2) (d). The pension dates from the expiration of the certificate in case of its renewal after sixty-five.
(*e*) *Ibid.*, s. 5 (2) (a).
(*f*) *Ibid.*, s. 8 (2); and see also s. 6 (1) (c).
(*g*) *Ibid.*, s. 2 (1).
(*h*) *Ibid.*
(*i*) *Ibid.*, s. 2 (2).
(*k*) *Ibid.*, s. 2 (3).
(*l*) *Ibid.*

SECT. 6. Pension Scheme for Certificated Teachers.

Determination of differences.

296. Various questions which may arise in the application of the pension scheme are to be determined by the Treasury or the Board of Education (*m*).

(*m*) Elementary School Teachers (Superannuation) Act, 1898 (61 & 62 Vict. c. 57), s. 7.

EELS.

See FISHERIES.

EJECTMENT.

See COUNTY COURTS; LANDLORD AND TENANT; MORTGAGE; REAL PROPERTY AND CHATTELS REAL.

ELDEST SON.

See DESCENT AND DISTRIBUTION; SETTLEMENTS; WILLS.

ELECTION, DOCTRINE OF.

See EQUITY; WILLS.

ELECTIONS.

PAGE

PART I. INTRODUCTION - - - - - - - - - - 135

PART II. EXTENT OF FRANCHISE - - - - - - 139

SECT. 1. IN PARLIAMENTARY ELECTIONS- - - - - - 139

Sub-sect. 1. Personal Qualifications - - - - - 139
Sub-sect. 2. Property Qualifications - - - - - 145

(i.) The Ownership Franchise (Counties only) - - 145
(ii.) The Occupation Franchise - - - - - 155

(a) Counties - - - - - - - 156
(b) Boroughs - - - - - - - 158
(c) In General - - - - - - - 159

(iii.) The Household Franchise - - - - - 163

(a) Inhabitant Occupiers as Owners or actual Tenants - - - - - - - 163
(b) The Service Franchise - - - - - 172

(iv.) Lodger Franchise - - - - - - - 174
(v.) Reserved Rights - - - - - - - 177

(a) Counties - - - - - - - 177
(b) Boroughs - - - - - - - 178
(c) City of London - - - - - - 180

Sub-sect. 3. The Universities - - - - - - 181

(i.) Oxford - - - - - - - - - 181
(ii.) Cambridge - - - - - - - - 182
(iii.) London - - - - - - - - - 182

SECT. 2. IN MUNICIPAL ELECTIONS- - - - - - - 182

Sub-sect. 1. Election of Councillors of a Municipal Borough - 182

(i.) Preliminary - - - - - - - - 182
(ii.) Personal Qualifications - - - - - - 182
(iii.) Property Qualifications - - - - - 184

(a) The Old Burgess Franchise - - - - 184
(b) The Ten Pounds Occupation Franchise - - 188
(c) Franchises which do not obtain in Municipal Boroughs - - - - - - - 189
(d) In the Metropolis - - - - - - 190

Sub-sect. 2. Election of the Councillors of a County Council - 190
Sub-sect. 3. Election of the Councillors of Parish and District Councils - - - - - - - - 191
Sub-sect. 4. Election of the Members of a Board of Guardians 192
Sub-sect. 5. Elections in the Universities - - - - 192

PART III. REGISTRATION, AND REVISION OF LISTS OF VOTERS 193

SECT. 1. PREPARATION OF THE LISTS - - - - - - 193

Sub-sect. 1. In General - - - - - - - - 193
Sub-sect. 2. The Precept - - - - - - - - 195
Sub-sect. 3. Preliminary Inquiries and Notices by Overseers - 196

PAGE

PART III. REGISTRATION, AND REVISION OF LISTS OF VOTERS —*continued.*

SECT. 1. PREPARATION OF THE LISTS—*continued.*

Sub-sect. 4. Method of Publication of Notices, Lists, and Registers - - - - - - - - 199
Sub-sect. 5. The Preparation of the Lists for Revision - - 200

(i.) The Ownership List - - - - - - - 201
(ii.) The List of Freemen - - - - - - - 202
(iii.) The Reserved Rights List - - - - - - 203
(iv.) The Occupiers List - - - - - - - 203
(v.) The Old Lodger List - - - - - - - 204
(vi.) The New Lodger List - - - - - - - 204
(vii.) The Non-resident List - - - - - - - 205

Sub-sect. 6. Notice of Claims and Objections - - - - 205

(i.) Notice of Claim - - - - - - - - 205
(ii.) Notice of Objection - - - - - - - 209

SECT. 2. REVISING BARRISTERS - - - - - - - - 217

Sub-sect 1. Appointment - - - - - - - - 217
Sub-sect. 2. The Court - - - - - - - - - 219
Sub-sect. 3. The Actual Work of Revision - - - - - 222

SECT. 3. THE REGISTER - - - - - - - - - - 241

Sub-sect. 1. Compiling the Register after Revision - - 241
Sub-sect. 2. The Completed Parliamentary Register - - 244
Sub-sect. 3. Registers of County Electors and Burgesses - 244

SECT. 4. APPEALS - - - - - - - - - - - - 248

PART IV. THE CONDUCT OF AN ELECTION - - - - - 257

SECT. 1. PARLIAMENTARY - - - - - - - - - 257

Sub-sect. 1. The Writ - - - - - - - - - 257
Sub-sect. 2. The Returning Officer - - - - - - 258
Sub-sect. 3. Notice of Election - - - - - - 261
Sub-sect. 4. Commencement of the Election - - - 263
Sub-sect. 5. Candidates - - - - - - - - 264
Sub-sect. 6. Appointment of the Election Agent and Sub-agents - - - - - - - - - 266
Sub-sect. 7. Assistants, Workers, and Agents - - - 268
Sub-sect. 8. Nomination - - - - - - - - 273
Sub-sect. 9. Freedom of Election and the Prevention of Corrupt and Illegal Practices - - - - - 278

(i.) In General - - - - - - - - - 278
(ii.) Corrupt Practices - - - - - - - - 281
(iii.) Illegal Practices - - - - - - - - 293
(iv.) Illegal Payment and Illegal Employment - - 300
(v.) Illegal Hiring - - - - - - - - - 303

Sub-sect. 10. The Poll - - - - - - - - - 305

(i.) In General - - - - - - - - - 305
(ii.) University Elections - - - - - - - 322

Sub-sect. 11. Counting the Votes - - - - - - - 326
Sub-sect. 12. Disposal of the Ballot Papers - - - - 329
Sub-sect. 13. Declaration of the Result and Return of the Member - - - - - - - - - 331
Sub-sect. 14. The Returning Officer's Expenses - - - 333
Sub-sect. 15. The Return and Declaration respecting Candidates' Election Expenses - - - - - - 335

PAGE

PART IV. THE CONDUCT OF AN ELECTION—*continued.*

SECT. 2. MUNICIPAL - - - - - - - - - - - 338

Sub-sect. 1. In General - - - - - - - - 338
Sub-sect. 2. Election of Councillors in Municipal Corporations 339

(i.) Preliminary - - - - - - - - - 339
(ii.) Agents, Workers, and Assistants - - - - 341
(iii.) Nomination - - - - - - - - - 342
(iv.) Freedom of Election and the Prevention of Corrupt and Illegal Practices - - - - - - - 345
(v.) The Poll etc. - - - - - - - - - 349
(vi.) Return and Declaration as to Expenses - - - 351

Sub-sect. 3. Election of Mayor in Municipal Corporations - 352
Sub-sect. 4. Election of Aldermen in Municipal Corporations 354
Sub-sect. 5. Election of Elective Auditors in Municipal Corporations - - - - - - - - 355
Sub-sect. 6. Election of the Councillors of a County Council 356
Sub-sect. 7. Election of the Chairman of a County Council - 359
Sub-sect. 8. Election of County Aldermen - - - - 361
Sub-sect. 9. Election of the Councillors of an Urban District Council - - - - - - - - - 361

(i.) Preliminary - - - - - - - - - 361
(ii.) Nomination - - - - - - - - - 364
(iii.) Freedom of Election etc. - - - - - 368
(iv.) The Poll - - - - - - - - - - 368
(v.) Counting the Votes - - - - - - - - 373
(vi.) Declaration of the Result - - - - - 374

Sub-sect. 10. Election of the Chairman of an Urban District Council - - - - - - - - - 375
Sub-sect. 11. Election of Councillors of a Rural District Council 376

(i.) Preliminary - - - - - - - - - 376
(ii.) Nomination - - - - - - - - - 378
(iii.) The Poll - - - - - - - - - 379
(iv.) Counting the Votes - - - - - - - 381
(v.) Declaration of the Result - - - - - 381

Sub-sect. 12. Election of the Chairman and Vice-Chairman of a Rural District Council - - - - 382
Sub-sect. 13. Election of the Councillors of a Parish Council 382

(i.) Preliminary - - - - - - - - - 382
(ii.) Nomination etc. - - - - - - - - 383
(iii.) Proceedings between the Parish Meeting and the Poll 387
(iv.) The Poll - - - - - - - - - - 388
(v.) Declaration of the Result - - - - - 389

Sub-sect. 14. Election of the Chairman of a Parish Council - 389
Sub-sect. 15. Election of the Members of a Board of Guardians 389

(i.) Preliminary - - - - - - - - - 389
(ii.) The Poll - - - - - - - - - - 391
(iii.) Counting the Votes - - - - - - - - 392

Sub-sect. 16. Election of the Chairman of a Board of Guardians 393
Sub-sect. 17. Elections in the Metropolis - - - - 393

(i.) In General - - - - - - - - - 393
(ii.) The Corporation of the City of London - - - 394
(iii.) The Metropolitan Borough Councils - - - 395
(iv.) The London County Council - - - - - 397
(v.) Boards of Guardians - - - - - - - 397

Sub-sect. 18. University Elections (other than Parliamentary) 398

PAGE

PART V. AUTHORISED EXCUSES AND EXCEPTIONS - - - - 398
SECT. 1. IN PARLIAMENTARY ELECTIONS - - - - - 398
SECT. 2. IN MUNICIPAL ELECTIONS - - - - - - 407

PART VI. PETITIONS - - - - - - - - - - - 408
SECT. 1. IN PARLIAMENTARY ELECTIONS - - - - - 408
Sub-sect. 1. The Election Judges and their Jurisdiction - - 408
Sub-sect. 2. Presentation of a Petition - - - - - 411
Sub-sect. 3. Security for Costs - - - - - - 419
Sub-sect. 4. Interlocutory Proceedings - - - - - 422
Sub-sect. 5. The Hearing - - - - - - - 437
Sub-sect. 6. Judgment and its Effect - - - - - 460
Sub-sect. 7. Election Commissioners - - - - - 463
Sub-sect. 8. Costs - - - - - - - - - 472
Sub-sect. 9. Disqualification of Individuals - - - - 483
SECT. 2. IN MUNICIPAL ELECTIONS - - - - - - 486
Sub-sect. 1. The Commissioner and his Jurisdiction - - 486
Sub-sect. 2. Presentation of a Petition - - - - - 491
Sub-sect. 3. Interlocutory Proceedings - - - - - 505
Sub-sect. 4. The Hearing - - - - - - - 512
Sub-sect. 5. Judgment and its Effects - - - - - 518
Sub-sect. 6. Costs - - - - - - - - - 520
Sub-sect. 7. Disqualification of Individuals - - - - 524

PART VII. CRIMINAL LAW, PENAL ACTIONS, AND INJUNCTIONS - - - - - - - - - - - - 525
SECT. 1. CRIMINAL LAW - - - - - - - - - 525
Sub-sect. 1. Felonies - - - - - - - - - 525
Sub-sect. 2. Indictable Misdemeanours - - - - - 528
Sub-sect. 3. Offences which are summarily triable - - - - 532
Sub-sect. 4. The Criminal Jurisdiction of the Election Court - 535
SECT. 2. PENAL ACTIONS AND INJUNCTIONS - - - - - 537
Sub-sect. 1. Penal Actions - - - - - - - - 537
Sub-sect. 2. Injunctions - - - - - - - - 540

For Acceptance of Office - - - *See title* LOCAL GOVERNMENT; PARLIAMENT.
Churchwardens - - - - „ ECCLESIASTICAL LAW.
Convocation - - - - „ ECCLESIASTICAL LAW.
Corporate Officers - - - „ COMPANIES; CORPORATIONS.
Directors - - - - - „ COMPANIES.
Disqualification of Candidates - „ LOCAL GOVERNMENT; PARLIAMENT.
Ecclesiastical Officers - - - „ ECCLESIASTICAL LAW.
Manorial Officers - - - - „ COPYHOLDS.
Members of Parliament - - „ PARLIAMENT.
Municipal Officers - - - „ LOCAL GOVERNMENT.
Poor Law Officers - - - „ POOR LAW.
Public Meetings - - - - „ CRIMINAL LAW AND PROCEDURE; LIBEL AND SLANDER; PRESS AND PRINTING.
Qualification of Candidates - - „ LOCAL GOVERNMENT; PARLIAMENT.
Representative Peers - - - „ CONSTITUTIONAL LAW; PARLIAMENT.
Resignation - - - - - „ LOCAL GOVERNMENT; PARLIAMENT.
Speaker, Election of - - - „ PARLIAMENT.

Part I.—Introduction.

In General.

297. In every civilised State where freedom prevails the conduct of affairs, as well in the community at large as in the many subordinate institutions which exist within it, is practically in the hands of majorities, and accordingly the right to vote, the conditions under which that right can be exercised, the proportional value of each vote, the qualification of the voters, and of the representatives for whom they vote (*a*), the registration of the voters, the safeguards against an improper exercise of the franchise, the regulations under which elections are held, corrected, or set aside, the penalties imposed on those who abuse the system, and, above all, the nature of the tribunals to whom the decision of all these matters is committed—all these things must, or ought to be, of vital importance to every thoughtful citizen.

This is not the place to attempt to trace the general evolution of settled law from the rough elements of natural right and justice, but probably no branch of jurisprudence exhibits more clearly the gradual transition above indicated than that which governs the law and practice of elections.

In the early beginnings of representative government the right to vote for members of the great assembly of the nation in Parliament was of a most elementary character, gaining strength as the people from time to time learned more and more to realise the power which they possessed. For a long time the *de facto* rulers kept a firm hold on the reins. Thus, until comparatively recent years, Parliament decided practically according to its own unfettered will all questions which arose in relation to the franchise and its exercise, to the freedom of voting, and to purity or corruption accompanying an election.

In the reign of King James I., "certain rules or great outlines of the legal rights of voting" were "laid down as a guide and direction to the electors and candidates in the country, and as a remembrance of the reasons and grounds upon which the determinations of the House were founded" (*b*). It was at that time, after some curious instances to the contrary, "universally known and admitted to be the sole right of the House of Commons to examine and determine all matters relating to the election of their own members, and that neither the qualification of any elector nor the right of any person elected is cognisable or determinable, or will be suffered by that House to be called in question by any other judicature whatsoever (except in such cases as were specially provided for by Act of Parliament" (*c*)). And it seems that in ancient times Parliament arrogated, or attempted to arrogate, to itself even the power of inflicting punishment for bribery at elections (*d*).

Later on the parliamentary committees which decided these matters were constituted, generally in proportion to the strength from time to time of the principal parties in the House of Commons.

(*a*) For the law as to qualification of candidates, see title PARLIAMENT.
(*b*) Glanv. El. Cas. p. vi.
(*c*) *Ibid.*, pp. ix., x.
(*d*) See 2 Doug. El. Cas. p. 402.

PART I. Introduction.

Although the committees purported in all cases to act in accordance with definite principles laid down by them, there can be little doubt that their decisions were liable to be, and to some extent were, influenced by political or personal bias. This proposition, it is true, must not be put too high—first, because the seventeen sets of reports of election petitions (*e*) tried before parliamentary committees from 1624 to 1865 show on the face of them that the questions raised were discussed and determined on legal lines; and, secondly, because the Act of 1868, which first transferred the jurisdiction to a judge of the High Court, itself adopts (subject to rules of court) "the principles, practice and rules on which committees of the House of Commons had previously acted" (*f*).

But after making all due allowance for the credit which is due to the parliamentary committees for setting up and honestly trying to uphold just and equitable standards of decision, the inherent unfitness of non-legal tribunals whose impartiality was not above suspicion to deal with election petitions could not fail to become more and more apparent (*g*), and so it was gradually recognised by Parliament itself that judicial knowledge and fairness in dealing with these matters were essential to the freedom and purity of elections, and this led at last in 1868 to the voluntary surrender of the real authority to the Judges.

It would be difficult to exaggerate the importance of this change. Instead of the casual and unscientific character of the decisions, and the inevitable party bias to which they were subject, the same absolute fairness which prevailed in the administration of the ordinary law was introduced into the determination of contested elections. And the cardinal point is this: the Judges are independent and irremovable, "*quamdiu se bene gesserint*" (*h*), and all trace of

(*e*) For list of these see Jelf's "Where to find your Law," 3rd ed., p. 482.

(*f*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 26.

(*g*) The view above expressed is confirmed by reference to a recent interesting work entitled "The Unreformed House of Commons," by Edward Porritt, 1903, of which the following passages on pp. 540, 541, Vol. I., bear upon the matter in hand:—

"In 1770 the hearing and determining of election cases was transferred from the House to committees of fifteen members, whose determinations were final.

"The change was brought about by the Grenville Act, carried against the opposition of George III. and the North Administration. . . . Partisan influences were not eradicated by the transference of petitions to the Grenville committees. When petitions were determined by the House members were openly canvassed for their votes. After the Grenville Act the House made an order 'that no person do presume to solicit the attendance of members when the matter of any petition complaining of an undue election or return is ordered to be taken into consideration.' But in spite of this order members were canvassed by both parties to a petition to attend in the House when a ballot for a committee was being taken.

"The committees at best were not ideal tribunals for the determination of the questions which came before them. Procedure was slow. . . . Frequently committees were occupied for from thirty to forty days, and the average expense of a committee was a hundred pounds a day.

"But the new method was a distinct improvement on the old openly partisan method of determining those cases by a vote of the House."

(*h*) Act of Settlement, 1700 (12 & 13 Will. 3, c. 2), s. 3; and note that afterwards by stat. (1760) 1 Geo. 3, c. 23, "An Act for rendering more effectual the provisions relating to the commission and salaries of Judges" the Judges were

party influence is now removed from the consideration of every question relating to elections, and in substance every such question is decided by the Judges or their nominees.

Thus, in the first place are set forth in the following pages, under their proper heads, the various franchises in parliamentary and municipal affairs respectively (*i*), depending partly upon what may be called the "Parliamentary common law" and partly upon statutory enactments, and all subject to interpretation by the courts of law.

Next, the article deals with registration of the persons entitled to vote and the various steps which have to be taken in the preparation and publication of the lists, and with claims and entries of objections, followed by the authoritative review of the whole by the Revising Barrister (*j*). It will be observed that these judicial officers derive their jurisdiction from their appointment by the Judges, and their decisions are subject to review by the High Court, so that at this stage also the whole matter is entirely removed from the influence of party politics. Then follows an account of the legal regulations attending the conduct of elections, whether parliamentary or municipal, with all their elaborate provisions framed in order to preserve the freedom of election, and to prevent corrupt and illegal practices, and for various ancillary purposes (*k*).

Election petitions.

Next comes the most important and critical head of all—the law and practice of petitions, by which the validity of the election is called in question and finally decided—both as regards parliamentary and municipal and other similar elections (*l*). It is here that the totally independent authority of the irremovable Judge becomes most apparent.

First, as to parliamentary election petitions. The Election Judges are appointed by *rota* from among the Judges of the King's Bench Division of the High Court, so that it would be impossible for Parliament or for the executive government to have anything to do with their selection, or directly or indirectly to interfere with their decisions, while any connection with politics which they may have individually had before they were raised to the bench is at an end from the time of their appointment. So far indeed is the whole nature of election petitions removed from the region of party strife that it is by no means uncommon to see counsel who are known to entertain strong party preferences appearing before the tribunal in

continued in their offices notwithstanding the demise of the Crown, and their full salaries were also absolutely secured to them during the continuance of their commissions. By the same Act, however, it is lawful for the Crown to remove any Judge or Judges upon the address of both Houses of Parliament. According to Blackstone (1 Bl. Com., ed. 1844, p. 267), this latter Act was enacted at the earnest recommendation of the King himself from the throne, "His Majesty having been pleased to declare that he looked upon the independence and uprightness of the Judges as essential to the impartial administration of justice, as one of the best securities of the rights and liberties of his subjects, and as most conducive to the honour of the Crown." The Act of Settlement above cited had, however, already established the principle beyond a doubt. See Hallam's "Constitutional History," ed. 1867, p. 192.

(*i*) See pp. 139—193, *post*.
(*j*) See pp. 193—257, *post*.
(*k*) See pp. 257—398, *post*.
(*l*) See pp. 408—525, *post*.

PART I. Introduction.

support of candidates who represent the opposite side in politics to themselves, while actual members of Parliament are altogether precluded from appearing upon the trials of parliamentary election petitions as advocates (*m*). Moreover, the Public Prosecutor is always represented in order to watch the case on behalf of the public with a view to the punishment of corrupt and illegal practices. And although in form the Election Judges make their report to Parliament, such report must be adopted and acted upon as directed by statute (*n*), as to the result in the particular case, both as to the validity or invalidity of the election, and as to the disqualification of individuals who have offended; and if the Judges report that there is reason to believe that general bribery or corruption prevails in the constituency, Parliament usually takes steps to follow up such report by the appointment of a commission, with a view to proceedings for disfranchisement of the borough or district incriminated, or for a suspension of their right to be represented. A commission of barristers of not less than seven years' standing (who are called Election Commissioners) is occasionally constituted to inquire into and report as to alleged corruption in any locality independently of any particular petition, but with the same end in view. These Commissioners, however, are not nominees of the Judges, but appointed by the Crown on a joint address by both Houses of Parliament (*o*).

Municipal election petitions.

Again, as regards municipal election petitions (*p*), the same procedure as that used in parliamentary election petitions is followed *mutatis mutandis*, the only real difference being that the tribunal to whom these petitions are referred for trial is a Commissioner appointed by the Election Judges on the *rota* for the year. And the importance of the responsibility reposed in this official is shown by the proviso in the statute that he must be a barrister of fifteen years' standing (*q*)—curiously enough, five years longer than is necessary for the qualification of a judge of the High Court! (*r*).

Here, too, the municipal authorities probably used formerly to deal with their own questions of disputed elections and the like. Certainly the court of the mayor and aldermen of the City of London have from time immemorial had jurisdiction (with the assistance of the Recorder) to determine whether the elections of aldermen were good (*s*). But now it seems that the jurisdiction is transferred to the Commissioner by virtue of Part IV. of the Municipal Corporations Act, 1882, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 35. The old jurisdiction, however, has been exercised quite lately (*t*).

(*m*) *Re Kinross (Lord)*, [1905] A. C. 468, 471; see p. 442, *post*.

(*n*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 125), as amended by Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 13; and Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 12.

(*o*) See 15 & 16 Vict. c. 57.

(*p*) See p. 486, *post*.

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 92; Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 36 (2).

(*r*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 8.

(*s*) See *R.* v. *Johnson* (1836), 6 Nev. & M. (K. B.) 870; and also those of common councilmen; see *Bolton* v. *Jeffes* (1718), 2 Bro. Parl. Cas. 463.

(*t*) See the case of *Port Soken Ward*, *Times*, 24th January, 1906.

The article concludes by enumerating and commenting on the various laws and enactments relating to the criminal law, penal actions, and injunctions connected with elections, and the legal decisions which have been pronounced thereupon (*u*).

Thus there can be no doubt that whatever abuses or defects may have existed in the past, elections are now dealt with on sound and equitable principles, and that the even-handed justice administered by the courts of law is a guaranteed protection against the disturbing influences of party or politics.

Part II.—Extent of Franchise.

SECT. 1.—*In Parliamentary Elections.*

Registration necessary.

298. No person is entitled to vote at any election for a county or borough unless his name is on the register for the time being in force for such county or borough (*a*).

Every person (*b*) whose name is on such register is entitled to vote, unless prohibited from voting by any statute or by the common law of Parliament (*c*).

The register for each county or borough is an official list of persons entitled to vote at a parliamentary election, which is prepared annually (*d*), and copies of which may be obtained by any person at a price which is fixed by statute (*e*).

SUB-SECT. 1.—*Personal Qualifications.*

Legal incapacities—infants.

299. To entitle a person to have his name placed upon the register, it is necessary that he should be of full age (*f*), and that he should not be subject to any legal incapacity (*g*).

(*u*) See pp. 525—540, *post*.

(*a*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 7; Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), ss. 31, 32.

(*b*) "Person" does not for this purpose include "corporation." No corporation as such has a right to be registered or to vote. A corporation sole, however, being also a person, may in the latter capacity have a right to vote. See *Harris* v. *Phillips*, [1891] 1 Q. B. 267. See title CORPORATIONS, Vol. VIII., p. 374.

(*c*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 7; and see pp. 313—315, *post*.

(*d*) Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 17 (2); see pp. 241—248, *post*.

(*e*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 49; see p. 244, *post*.

(*f*) "Act for further regulating elections of members to Parliament," Stat. (1695) 7 & 8 Will. 3, c. 25, s. 8. At common law it has long been laid down that infants may not vote. "Multitudes are bound by Acts of Parliament which are not parties to the elections, . . . as men within the age of one-and-twenty years etc." (4 Co. Inst. p. 4). Subsequent statutes stating qualifications have been passed to the same effect. It is not necessary that the person claiming to be registered should be of full age during the whole of the qualifying period (*Powell* v. *Bradly* (1864), 18 C. B. (N. S.) 65). But it is not sufficient for him to reach full age before his claim to be on the register is heard (*Hargreaves* v. *Hopper* (1875), 1 C. P. D. 195). It is sufficient if he is of full age on 31st July in the qualifying year (Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (7)). This date does not appear to be affected by s. 12 of the Registration Act, 1885 (48 & 49 Vict. c. 15), which alters the date of computation of the qualifying period from 31st to 15th July.

(*g*) In referring to the other qualifications for registration and voting it is

SECT. 1. In Parliamentary Elections.

Females.

300. Every female is subject at common law to an incapacity which prevents her from having a right to vote at a parliamentary election (*h*); and when a statute gives a right to a "man" having certain qualifications to be registered as a parliamentary voter, this word must be construed as synonymous with "male" (*i*), although the general rule of interpretation of statutes is that, unless a contrary intention appears, words importing the masculine gender include females (*k*).

This rule, absolutely excluding females from the parliamentary franchise, obtains in counties as well as in boroughs (*l*); and a female has no *locus standi* to appeal against a refusal to place her name upon the register (*m*).

Peers.

301. A peer of Parliament is legally incapable of voting at a parliamentary election (*n*), even though his name may have been placed upon the register without objection (*o*). And this incapacity extends to the case of an Irish peer who has not been elected a representative peer, and who has not, therefore, any seat in the House of Lords (*p*).

Aliens.

302. An alien is subject to a legal incapacity unless a certificate of naturalisation has been granted to him, or unless letters of denization have been granted by His Majesty (*q*).

Lunatics.

303. Lunatics and idiots are subject at common law to an incapacity to vote at an election (*a*). A lunatic, however, may vote in a lucid interval (*b*).

assumed throughout that the person complies with these essential personal qualifications. See Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 20, and Representation of the People Act, 1867 (30 & 31 Vict. c. 102), ss. 3—5.

(*h*) 4 Co. Inst. pp. 4, 5; *Nairn* v. *St. Andrews University*, [1909] A. C. 147. The law was exhaustively examined in *Chorlton* v. *Lings* (1868), L. R. 4 C. P. 374; and two unreported cases which were said to show the contrary, namely, *Catharine* v. *Surry* (undated) and *Holt* v. *Lyle* (1606), cited in the course of the judgment of LEE, C.J., in *Olive* v. *Ingram* (1739), 7 Mod. Rep. 263, at pp. 264 and 271, but not indorsed by him, must be definitely regarded as overruled.

(*i*) *Chorlton* v. *Lings* (1868), L. R. 4 C. P. 374. This decision was put on both grounds, the legal incapacity of the female and the true construction of the word "man" in the context.

(*k*) Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 1 (a).

(*l*) *Chorlton* v. *Kessler* (1868), L. R. 4 C. P. 397.

(*m*) *Wilson* v. *Salford* (*Town Clerk*) (1868), L. R. 4 C. P. 398.

(*n*) *Beauchamp* (*Earl*) v. *Madresfield Overseers* (1872), L. R. 8 C. P. 245; 4 Co. Inst. pp. 2, 15.

(*o*) It was so decided by a parliamentary committee in the *Droitwich Case* (1835), Kn. & Omb. 65, in the case of Viscount Southwell.

(*p*) *Rendlesham* (*Lord*) v. *Haward* (1873), L. R. 9 C. P. 252.

(*q*) *Middlesex Case* (1804), 2 Peck. 118; *Tipperary Case* (1875), 3 O'M. & H. 36; *Re Stepney Election Petition*, *Isaacson* v. *Durant* (1886), 17 Q. B. D. 54; *Finsbury Central Division Case* (1892), 4 O'M. & H. 171, 172; *Reading Case* (1838), Falc. & Fitz. 553; *Bedford Case* (1833), Cockb. & Rowe, 98. See title ALIENS, Vol. 1., pp. 308, 312, 314.

(*a*) *Bedfordshire* (*Burgess'*) *Case* (1785), 2 Lud. E. C. 567.

(*b*) *Bridgwater* (*Tucker's Case*) (1803), 1 Peck. 108. Hence it seems that a lunatic making a claim in a lucid interval to be registered has a right to be registered, so far as regards his legal incapacity; but there do not appear to be any cases on the subject.

Felons.

304. A person convicted of treason or felony, for which he has been sentenced to death, or to penal servitude, or to any term of imprisonment with hard labour or to a term exceeding twelve months without hard labour, is (until he has suffered the punishment to which he has been sentenced (*c*), or such other punishment as by competent authority may be substituted therefor, or receives a free pardon from His Majesty) incapable of exercising any right of suffrage whatever within England, Wales, or Ireland (*d*). But a person who has only been convicted of a misdemeanour has a right to be registered, and to vote unless his punishment *de facto* prevents him from so doing (*e*). An outlaw is subject to legal incapacity (*f*), and cannot be registered (*g*).

Offenders against election laws.

305. A person found guilty on indictment, or by the report of an election court or election commissioners, of a corrupt practice (*h*) is, and continues for seven years thereafter to be, incapable of being registered as an elector or voting at any election in the United Kingdom, whether such corrupt practice has been committed at a parliamentary or a municipal election or at an election of parish councillors (*i*). A person found guilty on summary conviction, or by the report of an election court or election commissioners, of an illegal practice (*k*) is, and continues for five years thereafter to be, under a similar incapacity (*l*).

Corruption.

306. Every person who is convicted for the second time of the statutory offence of bribery or corruption of or by members, officers, or servants of corporations, councils, boards, commissions, or other public bodies is, at the discretion of the court before which he is convicted, liable to be adjudged incapable for seven years of being

(*c*) A person released upon licence (commonly called a "ticket-of-leave man") has not suffered the punishment, but is still under sentence. See Penal Servitude Act, 1853 (16 & 17 Vict. c. 99), ss. 9—11.

(*d*) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 2. See title CRIMINAL LAW AND PROCEDURE, Vol. IX., pp. 428-429. As this Act does not extend to Scotland, it would seem that there a convict is not under a legal incapacity to vote.

(*e*) *Re Jones* (1835), 2 Ad. & El. 436. But imprisonment may so break the occupation of premises for the qualifying period as to deprive a person of his right to be registered (*Powell* v. *Guest* (1864), 18 C. B. (N. S.) 72).

(*f*) "For hereby he loseth *liberam legem*, is out of the King's protection" etc. (6 Bac. Abr., tit. Outlawry (ed. 1832), p. 47).

(*g*) Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), s. 3. See also title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 431, and *R.* v. *Wilkes* (1770), 4 Burr. 2527, *per* Lord MANSFIELD, C.J., at p. 2551.

(*h*) See pp. 281—293, *post*.

(*i*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 6, 37, 39; and Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 23; and Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (3).

(*k*) See pp. 293—304, *post*.

(*l*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 10, 37, 39; Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 23; and Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (3). A list of persons so convicted is prepared annually (Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 39).

SECT. 1. In Parliamentary Elections.

registered as an elector or voting at an election of members to serve in Parliament or of members of any public body (*m*).

Paupers.

307. A person who within a year previous to the 15th day of July in the year in which such person would otherwise be registered has received parochial (*n*) relief is under legal incapacity, and is not to be registered (*o*). When a board of guardians finds work, which is unremunerative as far as the ratepayers are concerned, for a person resident in their union in response to an application by such person to the relieving officer for work, this is to be considered as parochial relief (*p*). But the provision of temporary work or other assistance for any person by a distress committee under the Unemployed Workmen Act, 1905, does not disentitle that person to be registered or to vote (*q*).

Medical relief.

308. When, however, a person has in any part of the United Kingdom received for himself or for any member of his family any medical or surgical assistance (*a*) or any medicine at the expense of the poor rate, such person is not by reason thereof to be deprived of any right to be registered or to vote at any election, except an election of guardians or of any body acting in the distribution of relief to the poor from the poor rate (*b*). It is often a difficult question of degree whether the relief given in a particular case is medical assistance or ordinary relief; and what may be medical assistance in the first instance may come to be ordinary relief in the course of time (*c*). All such questions are to be determined by the revising barrister, who is the final judge of the facts in these cases (*d*).

(*m*) Public Bodies (Corrupt Practices) Act, 1889 (52 & 53 Vict. c. 69), s. 2 (d).

(*n*) See title POOR LAW. As to alms other than parochial relief which may sometimes also be a disqualification, see pp. 144, 145, *post*.

(*o*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 36; Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 40. By s. 7 of Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), the date was altered from 31st to 15th day of July. As to the municipal franchise, see s. 7 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), extended to the county council franchise by s. 2 of the County Electors Act, 1888 (51 & 52 Vict. c. 10).

(*p*) *Magarrill* v. *Whitehaven Overseers* (1885), 16 Q. B. D. 242.

(*q*) 5 Edw. 7, c. 18, s. 1 (7).

(*a*) This was held, in the circumstances of a particular case, to include the assistance of an uncertificated midwife supplied to the wife of a claimant at the expense of the parish (*Honeybone* v. *Hambridge* (1886), 18 Q. B. D. 418). See also *M'Creery* v. *Hanrahan* (1887), 1 Law. Reg. Cas. 256.

(*b*) Medical Relief Disqualification Removal Act, 1885 (48 & 49 Vict. c. 46), s. 2 (a). As regards vaccination by a public vaccinator, see Vaccination Act, 1867 (30 & 31 Vict. c. 84), s. 26. As regards infectious diseases, see the Public Health (London) Act, 1891 (54 & 55 Vict. c. 96), s. 80 (4), and the Isolation Hospitals Act, 1893 (56 & 57 Vict. c. 68), s. 23. These Acts supply additional safeguards against disqualification in respect of assistance rendered under them at the public expense. See also s. 33 (4) of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), and the Cleansing of Persons Act, 1897 (60 & 61 Vict. c. 31), s. 1.

(*c*) For instance, where the wife of the person claiming to be registered had become the permanent inmate of a pauper lunatic asylum, and no payment had been made by him (*Kirkhouse* v. *Blakeway*, [1902] 1 K. B. 306).

(*d*) *Ibid.*

Children.

309. The parent of a blind or a deaf child for whose education or for the boarding out of whom, with a view to education at the public expense, special facilities have been given by Act of Parliament, is not by reason of any payment made thereunder in respect of his child to be deprived of any franchise or to be subject to any disability or disqualification (*e*). Neither does the provision of any meal to a child under the Education (Provision of Meals) Act, 1906 (*f*), nor the failure on the part of the parent to pay any amount demanded under the Act in respect of a meal, deprive the parent of any franchise or subject him to any disability.

Old age pensions.

310. The receipt of an old age pension under the Old Age Pensions Act, 1908, does not deprive the pensioner of any right to be registered or to vote (*g*).

Definition of "parochial relief."

311. Apart from these statutory exceptions, "parochial relief" may shortly be stated to include any relief or assistance in money (*h*) or kind (*i*) given to the person on whose behalf the vote is claimed, or to any person whom the recipient is bound by law to support (*k*), the burden of which falls upon the poor rate, and for which the recipient gives, in money or kind, either nothing or less than the value of the thing received (*l*). The value of the thing given by the recipient is for this purpose to be reckoned from the point of view of the ratepayers, so that even if the recipient does give his labour in return for such relief or assistance, but gives it at less than the current rate of wages in the district, it will still be "parochial relief" if it is unremunerative, so far as the ratepayers are concerned, within the principle above stated (*m*). But if the person on whose behalf the vote is claimed has given his undertaking to the guardians to repay the money, this undertaking may prevent

(*e*) Elementary Education (Blind and Deaf Children) Act, 1893 (56 & 57 Vict. c. 42), s. 10 (1). See title EDUCATION, p. 41, *ante*.

(*f*) 6 Edw. 7, c. 57, s. 4. See title EDUCATION, p. 32, *ante*.

(*g*) 8 Edw. 7, c. 40, s. 1 (4).

(*h*) Thus, where the person on whose behalf the vote was claimed had been supplied with the funeral expenses of his child at the expense of the poor rate, this was held to be "parochial relief" (*Oldham Case* (1869), 1 O'M. & H. 151, 161).

(*i*) Thus, where the person on whose behalf the vote was claimed had been supplied with necessaries when an inmate in a lunatic asylum, and the expense of those necessaries would eventually fall upon the poor rate, this was considered "parochial relief" (*Bedford Case* (1833), Cockb. & Rowe, 79).

(*k*) *Bedford Case, supra; Okehampton Case* (1833), 1 Peck. 373; *Berwick-on-Tweed Case* (1860), Wolf. & B. 174. All relief given to the wife or child under sixteen of a man is considered as given to that man (Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), s. 56). "Child" includes legitimate or illegitimate child under sixteen of a woman whom a man marries (*ibid.*, s. 57). But where the person on whose behalf the vote is claimed is not bound to support the person in question without an order of the justices, and no such order has been made, it is otherwise (*R.* v. *Ireland* (1868), L. R. 3 Q. B. 130; *Lancaster 2nd Case* (1848) 1 Pow. R. & D. 164; *Oldham Case* (1869), 1 O'M. & H. 159, 160; compare *M'Dermott* v. *Chambers* (1887), 22 L. R. Ir. 432). Where the person on whose behalf the vote was claimed paid all that he was asked to pay by the guardians towards the support of his father, he was held not to be disqualified (*Trotter* v. *Trevor* (1862), 13 C. B. (N. S.) 48).

(*l*) *Magarill* v. *Whitehaven Overseers* (1885), 16 Q. B. D. 242.

(*m*) *Ibid.*

SECT. 1. **In Parliamentary Elections.**

the assistance given from being regarded as parochial relief (*n*). The fact that the person claiming the vote has been excused from payment of poor rates upon the ground of poverty does not by itself disqualify him (*o*).

Alms, other than parochial relief.

312. A person who, within a year previous to the 15th day of July in the year in which such person would otherwise be registered, has received alms other (*p*) than parochial relief is also under legal incapacity, and is not to be registered, if the alms were such as before 1832 disqualified a man for being a voter by the law of Parliament (*q*). The principle upon which such law of Parliament was based is somewhat obscure (*r*); but in modern practice, as approved by courts of law, it may be stated that alms given by charities which are of such a nature as to imply that the partaker of them is in a state of indigence disqualify, whereas the alms of those charities which afford no such inference or from which a contrary inference may be drawn do not disqualify, the person claiming to be registered (*s*). The court will always incline to favour the qualification unless the law compels it to decide otherwise (*t*). The

(*n*) *Rochester Case* (1835), Kn. & Omb. 114; compare *Oldham Case* (1869), 1 O'M. & H. 151, 161. But where the person claiming the vote had merely written "I hope I shall not be burdensome to you any more and will pay you as soon as I can," this was held not to take the case out of the section (*Canterbury Case* (1855), Kn. & Omb. 321). By s. 58 of the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), relief given by way of loan under regulations approved of by the Local Government Board is a loan merely, and not relief so as to disqualify the borrower.

(*o*) *Mashiter* v. *Dunn* (1848), 6 C. B. 30; *Colchester Case* (1789), 1 Peck. 507.

(*p*) The other alms must be *ejusdem generis*. Compare the municipal case of *R.* v. *Lichfield Corporation* (1842), 2 Q. B. 693. It was held in a case of the removal of a pauper that the words "public parochial funds" in the Parish Apprentices Act, 1816 (56 Geo. 3, c. 139), did not cover a case where a man's son had been bound apprentice, and the money had been found out of a fund devised to the churchwardens of Halesworth in trust, *inter alia*, for binding out apprentices (*R.* v. *Halesworth* (*Inhabitants*) (1832), 3 B. & Ad. 717).

(*q*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 36; and Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 40.

(*r*) See *Bedford Case* (1779), 2 Doug. El. Cas. 110—122, and cases there cited. Compare also *Colchester Case*, *supra*; *Downton Case* (1784), 1 Lud. E. C. 193; *Gloucestershire Case* (1777), Orme, Election Laws, 121; *Sudbury Case* (1780), Phil. El. Cas. 148; *Taunton Case* (1775), 1 Doug. El. Cas. 372. The old parliamentary committees, now abolished, decided these cases, considering each case on the facts. No principle of law appears to run clearly throughout the cases; but, in so far as a principle is adumbrated, it is that stated in the text. The cases "are conflicting beyond the power of reconciliation" (*Cowen* v. *Kingston-upon-Hull* (*Town Clerk*), [1897] 1 Q. B., *per* HAWKINS, J., at p. 273). Hence no more are cited.

(*s*) *Smith* v. *Hall* (1863), 15 C. B. (N. S.) 485, *per* WILLIAMS, J., at p. 498, citing Serjeant Heywood's Digest of the Law respecting County Elections (ed. 1812), p. 278, which he calls "a book of very high authority," in order to show what the law of Parliament was previously to 1832. But Serjeant Heywood refers also to *R.* v. *Munday* (1801), 1 East, 584, where LAWRENCE, J., says: "However persons rated might have been poor and impotent at the time when they were selected as objects of the charity, yet after their appointment to be members of the foundation they ceased to be of that description of persons, and therefore became rateable in proportion to the property so acquired." See, too, *R.* v. *Halesworth* (*Inhabitants*) (1832), 3 B. & Ad. 717.

(*t*) *Smith* v. *Hall*, *supra*, *per* ERLE, C.J., at p. 498.

SECT. 1. In Parliamentary Elections.

general idea underlying all the decisions is that persons so placed by their indigence as to be presumably subservient and destitute of all freedom of mind must not be permitted to exercise the franchise (*a*), since it is one of the first canons of election law that an election must be free (*b*). Three elements should be found before a man should be held to be disqualified on the ground of receipt of alms other than parochial relief, namely, poverty, receipt of alms, and the absence of that independence which is essential to the qualification of a voter (*c*). Whether these three elements are present is a question of fact (*d*) to be decided in each particular case. The statutory exceptions above mentioned under the heading of parochial relief apply also *mutatis mutandis* to the present case.

Returning officers and agents of candidates.

313. A returning officer is disqualified to give a vote, except in the case of an equality of votes, but he is entitled, if otherwise qualified, to be registered (*e*). And no agent, clerk, messenger or other person employed for payment by a candidate at an election may vote at such election (*f*).

SUB-SECT. 2.—*Property Qualifications.*

Property qualification.

314. In addition to the necessity that he should be of full age and that he should not be subject to any legal incapacity in the sense above explained, the person whose name it is sought to place upon the register must also have a certain property qualification—that is, a qualification depending in each case directly or indirectly upon property, and definitely fixed by law. Some of these qualifications arise in counties only (*g*); some arise in boroughs only (*h*); some are identical in counties and boroughs (*i*); and some are similar in counties and boroughs, but with slight modifications applying to the one or to the other respectively (*j*). The first of these qualifications, which is known as the ownership franchise, applies only to the case of counties.

(i.) *The Ownership Franchise (Counties only).*

Freehold estate of inheritance.

315. Three classes of freeholders are entitled to the ownership franchise:—

I. Every person, not otherwise incapacitated (*k*), who has (*l*) a

(*a*) *Smith* v. *Hall* (1863), 15 C. B. (N. S.) 485, *per* ERLE, C.J. Compare *Cowen* v. *Kingston-upon-Hull (Town Clerk)*, [1907] 1 Q. B. 273.

(*b*) See this subject discussed in detail, pp. 278 *et seq.*, *post.*

(*c*) *Harrison* v. *Carter* (1876), 2 C. P. D. 26; *Baker* v. *Monmouth (Town Clerk)* (1885), 34 W. R. 64; *Edwards* v. *Lloyd* (1887), 20 Q. B. D. 302.

(*d*) *Daniels* v. *Allard* (1887), Fox & S. Reg. 70. The court is slow to disturb the decision of the revising barrister. Compare *Dix* v. *Kent* (1890), Fox & S. Reg. 186.

(*e*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 2. See p. 328, *post.*

(*f*) *Ibid.*, s. 25. See pp. 266, 268, *post.*

(*g*) See pp. 145, 156, *post.*

(*h*) See pp. 158, 178, *post.*

(*i*) See pp. 159, 163, 172, *post.*

(*j*) See pp. 156—159, *post.*

(*k*) See p. 139, *ante.*

(*l*) This must now, apparently, be read as meaning who has on July 15th in

SECT. 1. In Parliamentary Elections.

freehold estate of inheritance—*i.e.*, an estate in fee simple or in fee tail—in lands or tenements of the annual value of 40*s.*, above all charges (*m*), situate in the county in respect of which the vote is claimed (*n*), is qualified to be registered if he has been in actual possession of such estate or in receipt of the rents and profits for his own use, for six calendar months next previous to the 15th day of July (*o*) in the year of registration, unless the property came to him within such six months by descent, succession, marriage, marriage settlement, devise, or by promotion to any benefice in a church or to any office (*p*).

Estates for life of 40*s.* value.

II. Every person not otherwise incapacitated (*q*) who has a freehold estate for life or lives, of a clear annual value above all charges (*r*) of 40*s.*, is qualified to be registered if two other conditions are satisfied:—(1) he must be in actual and *bonâ fide* occupation (*s*) of the lands or tenements, or must have acquired his estate by marriage, marriage settlement, devise (*t*), or promotion to a benefice or office (*u*); (2) he must have been in actual possession of such estate, or in receipt of the rents or profits for his own use, for six calendar months next previous to the 15th day of July (*v*) in the year of registration, unless the property came to him within that period by descent, succession, marriage, marriage settlement, devise, or promotion to a benefice or office (*w*).

Estates for life of £5 value.

III. Every person not otherwise incapacitated (*x*), who has a

the year of registration. Before 1832 it was probably necessary that he should have the required estate at the time of voting, but by s. 26 of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), the qualifying period therein prescribed is to be "sufficient any statute to the contrary notwithstanding." This apparently means sufficient to enable the person to be registered; so that if he has lost his title after July 15th, this fact is irrelevant. This seems to be the accepted view and to be universally acted upon in practice, but the matter does not seem to be quite free from doubt.

(*m*) An Act entitled "What Sort of Men shall be Choosers and who shall be chosen Knights of the Parliament," stat. (1429) 8 Hen. 6, c. 7. As to value, see p. 150, *post*.

(*n*) An Act entitled "Certain Things required in him who shall be a Chooser of the Knights in Parliament," stat. (1430) 10 Hen. 6, c. 2, the further limitations imposed by the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 18, not applying to estates of inheritance.

(*o*) The date was altered from the 31st to the 15th of July by s. 12 of the Registration Act, 1885 (48 & 49 Vict. c. 15).

(*p*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 26.

(*q*) See p. 139, *ante*.

(*r*) See p. 150, *post*.

(*s*) The holder of an "acre" (granted to him for life) is in actual occupation within the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 18, notwithstanding rights of aftergrass and common granted to others (*Trenfield* v. *Lowe* (1869), L. R. 4 C. P. 454). See *Phillips* v. *Salmon* (1877), 3 C. P. D. 97.

(*t*) The fellows of a college entitled as such under a will to payments from profits of land do not acquire an estate by devise (*West* v. *Robson* (1857), 3 C. B. (N. S.) 422).

(*u*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 18. The Act specifically reserves the right of registration to those seised on 7th June, 1832, of an estate of 40*s.* value, whether in occupation or not (*ibid.*).

(*v*) The date was altered from 31st to 15th July by s. 12 of the Registration Act, 1885 (48 & 49 Vict. c. 15).

(*w*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 26.

(*x*) See p. 139, *ante*.

freehold estate for life or lives of the clear yearly value of not less than £5 (*y*) above all rents and charges, is also qualified to be registered if the second only of the above conditions is satisfied (*z*).

Bare legal estate not sufficient.

316. In each of the above cases it is the beneficial or equitable estate that qualifies, not merely the legal estate (*a*), but persons who have only a right to share in profits, such as shareholders in a music-hall (*b*) or in a bridge (*c*), even where the land is invested in a shareholders' committee of management (*d*), have no legal or equitable estate by virtue of which they can claim to be qualified (*e*). For this reason the members of a corporation aggregate (*f*), of a dean and chapter (*g*), or of an unincorporated (*h*) or incorporated joint stock company (*i*), are not qualified in respect of the shares held by them. But partners in possession, through their committee of management, of freehold land purchased by them, and vested in trustees for their benefit, have an equitable interest to the extent of their respective shares (*k*).

Customary freeholders and easements.

A customary freeholder may be qualified for the ownership franchise (*l*). An interest of the nature of an easement is not sufficient to qualify (*m*).

Rentcharge.

317. In only two cases can a person be registered as possessing the ownership franchise in respect of the ownership of a rentcharge, namely, the owner of the whole of the tithe rentcharge of a rectory, vicarage, chapelry or benefice to which an apportionment of tithe rentcharge has been made (*n*); and a person registered (in respect of a rentcharge) on the 6th December, 1884, the date of the

(*y*) The value was changed to £5 by s. 5 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102).

(*z*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 18. *I.e.*, occupation is not required where the lands are of the clear yearly value of £5.

(*a*) *Ibid.*, s. 23; Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 74. See p. 150, *post*.

(*b*) *Freeman* v. *Gainsford* (1865), 18 C. B. (N. S.) 185.

(*c*) *Tepper* v. *Nicholls* (1864), 18 C. B. (N. S.) 121.

(*d*) *Wadmore* v. *Dear* (1871), L. R. 7 C. P. 212.

(*e*) *Ibid.*

(*f*) *Acland* v. *Lewis* (1860), 9 C. B. (N. S.) 32.

(*g*) *Harris* v. *Phillips*, [1891] 1 Q. B. 267.

(*h*) *Bennett* v. *Blain* (1863), 15 C. B. (N. S.) 518; *Watson* v. *Black* (1885), 16 Q. B. D. 270.

(*i*) *Bulmer* v. *Norris* (1860), 9 C. B. (N. S.) 19.

(*k*) Although the partnership deed declares that the property shall be deemed personal (*Baxter* v. *Newman* (1845), 14 L. J. (C. P.) 193; S. C. *sub nom. Baxter* v. *Brown* (1845), 7 Man. & G. 198).

(*l*) *Busher* v. *Thompson* (1846), 4 C. B. 48; *Passingham* v. *Pitty* (1855), 17 C. B. 299.

(*m*) So proprietors of pews, even though the fee simple and inheritance be vested in them, have no freehold interest in the land or its profits (*Brumfitt* v. *Roberts* (1870), L. R. 5 C. P. 224, in which BOVILL, C.J., at p. 233, said: "The interest in a pew or seat . . . is not an interest in land, . . . but more in the nature of an easement"). See also *Greenway* v. *Hockin* (1870), L. R. 5 C. P. 235, and *Hinde* v. *Chorlton* (1866), L. R. 2 C. P. 104.

(*n*) Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 4 (1). The expression "rentcharge" includes a fee farm rent, a rent seck, a chief rent, a rent of assize, and any rent or annuity granted out of land (*ibid.*, s. 11).

SECT. 1. In Parliamentary Elections.

passing of the Representation of the People Act, 1884, provided he is not otherwise qualified under that Act (*o*).

What is an estate for life.

318. An estate of uncertain tenure not determinable at the mere will of the lord, but which may enure for the life of the party, is an estate of freehold (*a*). But a mere possibility that a person claiming the vote will enjoy the estate for his life is not enough to enable him to substantiate his claim. All the circumstances of each case must be taken into account in order to determine whether any right exists, known to law or equity, which could be enforced in the event of a dispute (*b*).

Inmates of hospitals.

319. As to the question, which has often arisen, whether inmates and officials of hospitals and other institutions have such interest in the property thereof as to qualify them for the franchise, everything depends upon the exact facts in each particular case. The best

(*o*) Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 10. As the rentcharge qualification is not entirely abolished, it may be useful to note the following decisions: An annuity may be derived from the profits of land, but unless it is charged upon the land it cannot qualify (*Robinson* v. *Ainge* (1869), L. R. 4 C. P. 429). A rentcharge on lands situated in two counties was held to be apportionable for the purposes of the parliamentary franchise (*Barrow* v. *Buckmaster* (1852), 12 C. B. 664; *Bearn* v. *Watson* (1881), Colt. 268). It was also held that two distinct rentcharges might be joined together to make up the requisite value (*Wood* v. *Hopper* (1875), 1 C. P. D. 192). But a rentcharge must, as a rule, be considered as issuing out of the whole lands on which it is charged, and may not be apportioned so as to be regarded as issuing out of a portion of the lands only for purposes of qualifying the owner (*Mills* v. *Cobb* (1866), L. R. 2 C. P. 95). A rentcharge without a power of distress was held to be a "freehold tenement" within 8 Hen. 6, c. 7, payment being enforceable by distress under the Landlord and Tenant Act, 1730 (4 Geo. 2, c. 28), s. 5 (*Dodds* v. *Thompson* (1865), L. R. 1 C. P. 133), and the same result was held to follow where the remedy by distress was not available before the determination of a lease (*Dawson* v. *Robins* (1876), 2 C. P. D. 38). The *cestui que use* under a conveyance to uses of a rentcharge is in "actual possession" within the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 26 (*Heelis* v. *Blain* (1864), 18 C. B. (N. S.) 90; *Lowcock* v. *Broughton Overseers* (1883), 12 Q. B. D. 369; *Webster* v. *Ashton-under-Lyne Overseers* (*Hadfield's Case*) (1873), L. R. 8 C. P. 306); but in the case of a grant held to operate at common law and not under the statute of uses, the grantees are not in "actual possession" until the payment of rent (*Webster* v. *Ashton-under-Lyne Overseers* (*Orme's Case*) (1872), L. R. 8 C. P. 281), and they are not entitled to be registered unless they have been so in actual possession for six months before 15th July in the year of registration (*Hayden* v. *Tiverton* (1846), 16 L. J. (C. P.) 88). See *Druitt* v. *Lane* (1882), Saint's Registration Cases, 4th ed., p. 360; and *Murray* v. *Thorniley* (1846), 2 C. B. 217. A freehold rentcharge for life of less than £5 annual value is insufficient to qualify, being a tenement incapable of "actual and *bonâ fide* occupation" within s. 18 of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), and s. 5 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102) (*Druitt* v. *Christchurch Overseers* (1883), 12 Q. B. D. 365).

(*a*) *Beeson* v. *Burton* (1852), 12 C. B. 647. But an interest determinable at will does not amount to a freehold estate for life (*Fernie* v. *Scott* (1871), L. R. 7 C. P. 202).

(*b*) *Burton* v. *Brooks* (1851), 11 C. B. 41; *Collier* v. *King* (1861), 11 C. B. (N. S.) 14. In the latter case the court would not interfere with the decision of the revising barrister that a dissenting minister did not necessarily hold his appointment for life. ERLE, C.J., said that "the question is the same as that which would arise in equity if the trustees brought ejectment against the ministers without any legal cause for removal, and the minister applied for an injunction to stay the action."

test which can be suggested as giving the results of the decided cases is to determine the extent to which the claimant can be said to have an interest in the lands or tenements concerned, as distinguished from the mere profits of them. Thus, the bedesmen of a hospital, presumably unincorporated, were held to have a freehold interest in their rooms respectively (*c*); but it was decided otherwise in the case of the inmates of a hospital who were removable at the will of the governors (*d*).

Clergy.

320. A vicar of a parish being entitled to the freehold of the church and receiving pew rents amounting to over 40*s*., as part of his stipend, has a freehold interest sufficient to qualify him for the ownership franchise (*e*). An incumbent in possession as such of land of the required value, although only a perpetual curate, has an equitable freehold interest in such land sufficient to qualify him (*f*). But fees for marriages, baptisms, and churchings are not sufficiently connected with this freehold interest in the land to enable the court to take them into account in deciding whether the value of such freehold amounts to 40*s*. (*g*).

Such appointments as those held by bedesmen (*h*) and by the fellows of a college are not estates which have come by promotion to an office (*i*). The holding of an office and its revenues is not sufficient of itself to qualify the holder for the franchise; but it would seem that it must be accompanied by an actual estate, legal or equitable, in land or tenements. Thus a parish clerk is not qualified, by the mere fact of his being such, to enjoy the ownership franchise in

(*c*) *Simpson* v. *Wilkinson* (1844), 7 Man. & G. 50. Before the statute called "An Act for Erecting of Hospitals or Abiding or Working Houses for the Poor," stat. (1597) 39 Eliz. c. 5, it was illegal to found a hospital except by royal licence or letters patent. Lord Burleigh had founded the hospital of which Simpson was a bedesman before the passing of the Act. The court presumed a legal origin for the foundation, and held that the bedesmen were entitled to be registered as freeholders. This was followed in *Roberts* v. *Percival* (1864), 18 C. B. (N. S.) 36, where it was held that each of the bedesmen in Lord Burleigh's hospital had an equitable estate of freehold in the room occupied by him, in respect of which he was entitled to be registered for the county.

(*d*) *Davis* v. *Waddington* (1844), 7 Man. & G. 37. In that case the trustees of an almshouse were empowered by letters patent of incorporation to appoint and remove twenty-four inmates *toties quoties sibi coveniens fore videbitur*. And it was held that the inmates appointed under this power did not take an estate for life in the property enjoyed by them as such inmates, and were therefore not entitled to be registered as freeholders. So, in another case the "Younger Brethren" of a hospital who had been appointed for life, and who were entitled to money payments out of surplus revenues, were held to have no freehold interest (*Steele* v. *Bosworth* (1864), 18 C. B. (N. S.) 22; *Simey* v. *Marshall* (1872), L. R. 8 C. P. 269); nor persons who are mere objects of charity (*Heartley* v. *Banks* (1858) (Military Knights of Windsor), 5 C. B. (N. S.) 40, followed in *Freeman* v. *Gainsford* (1865), 11 C. B. (N. S.) 61). See also *Heath* v. *Haynes* (1857), 27 L. J. (C. P.) 50, and *Fryer* v. *Bodenham* (1869), L. R. 4 C. P. 529. The inmates of a hospital receiving *de facto* a sum sufficient to confer the franchise, but only entitled to a sum insufficient, are not qualified (*Ashmore* v. *Lees* (1845), 2 C. B. 31).

(*e*) *Vickers* v. *Selwyn* (1903), 89 L. T. 747; and see note (*q*) on p. 152, *post*, and title ECCLESIASTICAL LAW, Vol. XI., p. 563.

(*f*) *Wallis* v. *Birks* (1870), L. R. 5 C. P. 222; *Greenslade* v. *Darby* (1868), L. R. 3 Q. B. 421.

(*g*) *Kirton* v. *Dear* (1869), L. R. 5 C. P. 217.

(*h*) *Faulkner* v. *Upper Boddington Overseers* (1857), 3 C. B. (N. S.) 412

(*i*) *West* v. *Robson* (1857), 3 C. B. (N. S.) 422.

SECT. 1. In Parliamentary Elections.

respect of his office (*k*); but it is otherwise where the clerk has a freehold interest in land by virtue of his office (*l*).

Non-conformist ministers.

321. A dissenting minister does not hold a "benefice" (*m*), and as such cannot be said to hold an "office," although in the circumstances of a particular case he may be the holder of an "office" (*n*). In any event, however, he cannot be qualified to be registered in respect of lands or tenements unless promotion to the office gives him a freehold in those lands or tenements (*o*).

Trustees and mortgagees.

322. A trustee is not qualified to be registered as entitled to enjoy the ownership franchise in respect of a trust estate, in any case whatsoever; and a mortgagee is only so entitled when he is himself in actual possession or receipt of the rents and profits (*a*). A trustee has no power so to apportion an annuity payable to himself out of a trust estate as to make the annuity arise out of the part occupied by himself, for the purpose of obtaining a right to be registered on his own account as possessing the ownership franchise (*b*).

Cestui que trust and mortgagor.

323. A *cestui que trust* or mortgagor who is in actual possession, or in receipt of the rents and profits, is qualified to be registered as possessing the ownership franchise (*c*). The bare equitable right of a *cestui que trust* without "actual possession or receipt of rents and profits" is insufficient to qualify him to be so registered (*d*).

Value.

324. The clear yearly value must be the sum which the person claiming the vote has a right to receive, and not necessarily what

(*k*) *Bushell* v. *Eastes* (1861), 11 C. B. (N. S.) 106. In this case the claimant held his appointment for life and as part of his remuneration was entitled to a share of the fee payable on the opening of a new grave. It was held that he had no freehold interest in land.

(*l*) *Roberts* v. *Drewitt* (1864), 18 C. B. (N. S.) 48. The emoluments of an office paid out of revenues derived from land do not give the holder an equitable interest entitling him to be registered (*Hall* v. *Lewis* (1861), 11 C. B. (N. S.) 114).

(*m*) This is a word of ecclesiastical connotation, and is only applicable to the Church of England. See 2 Co. Inst. 29. The word is used in Magna Charta (1215), c. 14.

(*n*) See *Williams* v. *Blakeway* (1902), 88 L. T. 231. It has been suggested that a dissenting minister who is an "authorised person" to solemnise marriages under the Marriage Act, 1898 (61 & 62 Vict. c. 58), is the holder of an office.

(*o*) *Foster* v. *Mulhall* (1859), 10 Ir. C. L. R. 532.

(*a*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 74, re-enacting with alteration as to trustees in actual possession the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 23.

(*b*) The amount must be apportioned over the whole estate (*Mills* v. *Cobb* (1866), L. R. 2 C. P. 95).

(*c*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 74.

(*d*) *Anelay* v. *Lewis* (1855), 17 C. B. 316. An absolute power of sale in trustees does not prevent a *cestui que trust* from having a freehold interest if, in the event of sale, the trustees are accountable to him for the proceeds (*Ashworth* v. *Hopper* (1875), 1 C. P. D. 178). But where *cestuis que trustent* were in receipt of rents and profits of land (devised on trust for sale for the benefit of themselves and others, but remaining unsold), it was held that they could not elect to take the land. In the same case it was also held that it was the duty of the trustees to determine the interest of the beneficiaries by sale, and consequently that they had not such an estate (legal or equitable) as to entitle them to the ownership franchise for the county (*Spencer* v. *Harrison* (1879), 5 C. P. D. 97).

he actually does receive (*e*), while the criterion of the value itself is not the annual amount which the land actually does produce, but what in its existing state it may reasonably be expected to produce (*f*). Where the rent arises from estates in two counties, it may be apportioned (*g*). Rates and taxes are not charges (*h*). But all other expenses incurred or payable by the owner which are calculated to decrease the income accruing from the property are to be considered as falling under the head of charges (*i*).

Where the land is mortgaged, the interest paid must be considered as a deduction from, or charge upon, the annual value of the land, and this is so even when the principal debt only and not the interest is secured by the mortgage (*k*). Where the land is mortgaged together with other land belonging to the same owner, the proportion of the interest which is attributable to the land in question may be reckoned by making an apportionment (*l*). Payments made in reduction of the principal mortgage debt are not to be taken into account in estimating the value (*m*). Where payments are made on account of a principal debt, or on account of unpaid purchase-money, as well as by way of interest, the question to be considered is whether, taking the payments which have been made for the principal or purchase-money into account, and deducting the proper annual sums independently of the payments on account of the principal, the claimant's interest in the property is of the value of 40*s.* by the year (*n*).

(*e*) *Ashmore* v. *Lees* (1845), 2 C. B. 31.

(*f*) *Astbury* v. *Henderson* (1854), 15 C. B. 251. In this case the claimant had bought a piece of freehold building land for £150, but the land had lain unused since purchase. If let on building lease it was worth a ground rent of £15 a year at least, but was not worth 40*s.* for any other purpose. He was held entitled to be registered.

(*g*) *Ashmore* v. *Lees, supra*; *West* v. *Robson* (1857), 27 L. J. (C. P.) 262.

(*h*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 21. The qualifying freehold need not be assessed to the land tax (*ibid.*, s. 22). Note also that it was enacted by s. 6 of the Parliamentary Elections Act, 1744 (18 Geo. 2, c. 18), s. 6, that "No public or parliamentary tax, county, church, or parish rate or duty, or any other tax, rate, or assessment whatsoever, to be assessed or levied upon any county, division, rape, lathe, wapentake, ward, or hundred, is or shall be deemed or construed to be any charge payable out of or in respect of any freehold estate within the meaning and intention of this Act."

(*i*) Tenants' rates if paid by the landlord are charges (*Moorhouse* v. *Gilbertson* (1853), 14 C. B. 70). So is the necessary expense of collecting rent (*Sherlock* v. *Steward* (1859), 7 C. B. (N. S.) 21), so also the cost of a landlord's repairs necessary to make the premises of the qualifying value (*Hamilton* v. *Bass* (1852), 12 C. B. 631), but not where the repairs are not necessary to obtain the qualifying rent (*Buckley* v. *Wrigley* (1871), L. R. 7 C. P. 185).

(*k*) *Lee* v. *Hutchinson* (1850), 8 C. B. 16. The person claiming a vote in this case was in possession of freehold land worth £5 a year, which he had mortgaged for £100 at 5 per cent. interest. By the mortgage deed the security was for the principal only. The interest, which had been regularly paid, was held to be a "charge," and therefore the claimant had not a freehold of the clear annual value of 40*s.* above all charges, and was not entitled to be registered.

(*l*) *Moore* v. *Carisbrooke Overseers* (1852), 12 C. B. 661.

(*m*) *Rolleston* v. *Cope* (1870), L. R. 6 C. P. 292.

(*n*) *Ibid.*, *per* BOVILL, C.J., at p. 300. In this case periodical instalments payable to a building society in respect of principal were held not to be a

SECT. 1. In Parliamentary Elections.

Co-ownership.

325. Only one of two or more co-owners, such as joint tenants or tenants in common, may be registered or vote, unless the interest is derived by descent, succession, marriage, marriage settlement, or will, or unless they occupy the lands or tenements and are *bonâ fide* engaged as partners carrying on trade or business thereon, and each owner's interest therein is sufficient to qualify him (*o*). But there is no statute or principle of law which shows which of two claimants is to be preferred.

Owners of land in boroughs.

326. For the purposes of the franchise, the owner of land in a city or borough is considered to be the owner of land in the adjoining county; but no freeholder may vote for a county in respect of his estate or interest in any house, warehouse, counting house, shop, or other building occupied by himself in a city or borough, or in any land occupied by himself together with any such building, if such building is—whether taken separately, or jointly with the land so occupied—of such value as would confer on him the right of voting for such city or borough (*p*), whether he has or has not acquired the right to vote for such city or borough in respect thereof (*q*). The occupation of such premises by a servant is the occupation of the master, and is sufficient to debar the master from having any right

charge reducing the annual value of a freehold as against the mortgagor in possession, following *Robinson* v. *Dunkley* (1863), 15 C. B. (N. S.) 478). In the apparently conflicting case of *Copland* v. *Bartlett* (1848), 6 C. B. 18 (as likewise in *Beamish* v. *Stoke Overseers* (1851), 11 C. B. 29), no distinction was drawn between periodical payments of interest and periodical payments of the principal.

(*o*) Representation of the People Act, 1884 (48 Vict. c. 3), s. 4 (2). The property of an illegal company or firm can, of course, qualify no one (*Harris* v. *Amery* (1865), L. R. 1 C. P. 148).

(*p*) If, therefore, the property is of less value than would confer on him the right of voting for a borough, but is more than 40*s.*, the ownership franchise, it is submitted, may be successfully claimed.

(*q*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 24. For borough qualifications, see pp. 158, 163, 172, *post*. Pew rents are severable from a parsonage house so as to give a county qualification (*Beswick* v. *Alker* (1872), L. R. 8 C. P. 265). To create an occupation within the section there must be actual as well as legal occupation (*Wolfe* v. *Surrey County Council* (*Clerk*), [1905] 1 K. B. 439). The vicar of a parish constituted under the Church Building Acts, and situate within the limits of a parliamentary borough, who receives the pew rents as part of his stipend, is not the occupier of the church within the meaning of the section so as to be deprived of a vote for the county in respect of his freehold benefice. The owner and occupier of freehold land within a parliamentary borough is not deprived of a county qualification by reason of his occupying as tenant a house of the clear annual value of £10 within the same borough (*Burton* v. *Aston Overseers* (1849), 8 C. B. 7; *Capell* v. *Aston Overseers* (1849), 8 C. B. 1). One who occupied in a parliamentary borough his own freehold shop (capable of conferring a borough vote), and who also occupied a dwelling-house in the same borough, was held not entitled to the county franchise in respect of the freehold, although the revising barrister had, under the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (14), retained the dwelling-house qualification for voting, and noted as to the freehold that the occupier was not entitled to vote for the borough in respect thereof (*Chilcott* v. *Bullen* (1881), 46 L. T. 63, 282). The words "land occupied together with a house" refer not merely to contemporaneous occupation of the qualifying premises, but also to a user of them for a common purpose (*Sanders* v. *Smith* (1880), 43 L. T. 438).

to be registered as possessing the ownership franchise for the county (*r*).

Fraudulent conveyances to create votes.

327. No person may vote in respect or in right of any freehold estate which was made or granted to him fraudulently on purpose to qualify him to give his vote (*s*). All conveyances of lands, tenements, or hereditaments to multiply votes, or to split and divide the interest in any houses or land among several persons to enable them to vote, are void and of no effect (*t*). The conveyances aimed at are only such as are fraudulent in the sense that they are not intended to pass any real interest in the land; hence a *bonâ fide* conveyance to several persons for good consideration is not void, even though the intention is to multiply votes (*u*).

All conveyances fraudulently made to qualify any person to vote, subject to conditions or agreements to defeat or determine the estate or to reconvey the same, are to be taken, as against the vendor, to be free and absolute, and the purchaser is exonerated and discharged from all conditions and defeasances; and all bonds, covenants, securities, contracts or agreements for redeeming, revoking, defeating, or reconveying such estate are null and void to all intents and purposes (*x*). All devises by will splitting the interest among several persons to enable them to vote are also void (*y*).

Copyholders.

328. Every man not otherwise incapacitated (*a*) who has a legal or equitable estate for life or lives, or any larger estate, in lands or tenements of copyhold or other tenure, of the clear yearly value of not less than £5 above all charges (*b*), is qualified to be registered (*c*), provided he has been in actual possession or receipt of the rents or profits to his own use for six calendar months next

(*r*) *Brooks* v. *Baker*, [1906] 1 K. B. 11.

(*s*) Parliamentary Elections Act, 1744 (18 Geo. 2, c. 18), s. 5. As to a city or town which is a county in itself, see the Parliamentary Elections Act, 1745 (19 Geo. 2, c. 28), s. 4.

(*t*) Lord Somers' Act, stat. (1695) 7 & 8 Will. 3, c. 25, s. 6. A conveyance is not void under this Act unless the vendor be a party to the object intended by the conveyance (*Marshall* v. *Bown* (1845), 7 Man. & G. 188; *Hoyland* v. *Bremner* (1846), 15 L. J. (C. P.) 133). In the last case it was held that knowledge of the intention by the vendor's solicitor is not material.

(*u*) *Alexander* v. *Newman* (1846), 2 C. B. 122; *Riley* v. *Crossley* (1846), 2 C. B. 146; *Beswick* v. *Ashworth* (1846), 2 C. B. 152; *Beswick* v. *Aked* (1846), 2 C. B. 156; *Thornley* v. *Aspland* (1846), 2 C. B. 160; *Rawlins* v. *Bremner* (1846), 2 C. B. 166. Whether there is fraud is a question for the revising barrister (*Newton* v. *Mobberley Overseers* (1846), 2 C. B. 203; *Newton* v. *Crowley Overseers* (1846), 2 C. B. 207).

(*x*) Elections (Fraudulent Conveyances) Act, 1711 (10 Ann. c. 31), s. 1 (c. 23, Ruffhead). Persons privy to such conveyances and agreements are liable to a penalty of £40 at suit of a common informer (*ibid.*).

(*y*) Parliamentary Elections Act, 1813 (53 Geo. 3, c. 49), s. 1. But other devises in any such will are not affected (*ibid.*).

(*a*) See pp. 139 *et seq.*, *ante*.

(*b*) As to what are "charges," the same considerations apply as in the case of freeholds, see p. 151, *ante*.

(*c*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 5. Customary tenure has been held to qualify under this section (*Garbutt* v. *Trevor* (1863), 15 C. B. (N. S.) 550).

SECT. 1. In Parliamentary Elections.

previously to the 15th day of July (*d*) in the year of registration. The six months' possession, however, is not required if the property has been acquired by him within that period by descent, succession, marriage, marriage settlement, devise, or promotion to any benefice in a church, or promotion to any office (*e*).

No copyholder, customary tenant, or tenant in ancient demesne may vote for a county in respect of any house, warehouse, counting-house, shop, or other building, or in respect of any land occupied therewith, if of sufficient value to confer on him, or on any other person, a vote for a city or borough, whether he or any other person has or has not actually acquired the right to vote for such city or borough in respect thereof (*f*).

Leaseholders.

329. Two classes of leaseholders are entitled to the ownership franchise, namely, every man not otherwise incapacitated (*g*) who is entitled either as lessee or assignee to lands or tenements of any tenure whatever for the unexpired residue, whatever it may be, of any term originally created for a period not less than sixty years (whether determinable on a life or lives or not) of the clear yearly value of not less than £5 over and above all rents and charges (*h*); and every such man (*g*) who is entitled either as lessee or assignee to any lands or tenements of any tenure whatever for the unexpired residue, whatever it may be, of any term originally created for a period of not less than twenty years (whether determinable on a life or lives or not) of the clear yearly value of not less than £50 over and above all rents and charges (*i*). In each case the person must have been in the actual possession or receipt of the rents and profits of such lands or tenements to his own use for the whole of the twelve calendar months next previous to the 15th day of July (*k*) in the year of registration, unless such lands or tenements have come to him within such twelve months by descent, succession, marriage, marriage settlement, devise, or promotion to any benefice in a church, or to any office (*l*).

(*d*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 12.

(*e*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 26. Customary freeholders whose lands or tenements are of the yearly value of 40*s.* but less than £5 are qualified as freeholders, see p. 146, *ante*.

(*f*) *Ibid.*, s. 25. Note the distinction between the cases of freeholders (under s. 24) and copyholders (under s. 25), the difference arising from the words "or any other person" in s. 25 (see p. 152, *ante*). Where a copyhold house two stories high in a borough, of £10 clear yearly value, was let out separately in floors to two different tenants as distinct tenements, neither of such tenements being of sufficient value to give the occupier a vote, it was held that as the two tenements were vertically under one roof, and formed parts of a house which if occupied by him would have conferred on the claimant a vote for the borough, he was disqualified under the section for the county franchise in respect of the house (*Proctor* v. *Annison* (1859), 1 L. T. (N. S.) 187).

(*g*) See pp. 139 *et seq.*, *ante*.

(*h*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 5. As to what are "charges," see p. 151, *ante*.

(*i*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 20. As to what are "charges," see p. 151, *ante*.

(*k*) Formerly 31st July. The date was altered by the Registration Act, 1885 (48 & 49 Vict. c. 15) s. 12.

(*l*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 26.

Sub-lessees.

330. A sub-lessee or the assignee of an under-lessee is, however, entitled to this franchise only where he is in actual occupation of the qualifying property (*m*). Whether the term was originally created for at least sixty or for at least twenty years a person claiming this franchise must be entitled to the whole of the unexpired residue of that term; and if he is so entitled, it is not material whether his title is legal or equitable (*n*). But a mere right to have a lease granted, where no term has been actually created, does not qualify (*o*). The property must be of a corporeal nature which can be the subject of occupation as tenant by the person claiming the qualification (*p*). No lessee or assignee may vote for a county if his holding is sufficient to qualify him or any other person for a borough vote, whether or not he or any other person has actually acquired the right to vote for such borough in respect thereof (*q*).

(ii.) *The Occupation Franchise.*

£10 occupation franchise.

331. What is called the "£10 occupation franchise" is a franchise which may be claimed both in counties and in boroughs. Every man occupying any land or tenement in a county or borough in the United Kingdom of a clear yearly value of not less than £10 is entitled to be registered as a voter, and when registered to vote at an election for such county or borough in respect of such occupation, subject to the like conditions respectively as a man was on 6th December, 1884, entitled to be registered as a voter, and to vote at an election for such county in respect

(*m*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 20. Sub-lessees are not mentioned in s. 5 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), which re-enacts the provisions of this section with regard to leaseholders of the class just mentioned, but it was held in *Chorlton* v. *Stretford Overseers* (1871), L. R. 7 C. P. 198, that the effect of ss. 56 and 59 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), is that the proviso to s. 20 of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), must be read into s. 5 of the former Act, and therefore, that to be entitled to vote under that section the sub-lessee must be in actual occupation.

(*n*) *Gainsford* v. *Freeman* (1865) L. R. 1 C. P. 129. In this case the claimant had an equitable interest for life in a term of over sixty years, so that his interest in the term was liable to terminate before the end of the term. He was held not entitled to be registered. If his interest had been a legal one for life it appears that the same consequence would follow (*per* BYLES, J.; see also *Vance's Case* (1840), Alc. Reg. Cas. 269).

(*o*) *Trotter* v. *Watson* (1869), L. R. 4 C. P. 434, following *Vance's Case, supra*, which was decided under the similar Representation of the People (Ireland) Act, 1832 (2 & 3 Will. 4, c. 88).

(*p*) *Warburton* v. *Denton Overseers* (1870), L. R. 6 C. P. 267. In this case an annuity or rentcharge arising out of lands or buildings held for a term of over sixty years was held not to confer a vote.

(*q*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 25; see p. 152, *ante*. The lessee for a term of over sixty years of several houses in a borough may be entitled to the county franchise in respect of houses of insufficient value to give him a borough vote, in spite of the fact that one of the houses is of sufficient value to confer such vote (*Webb* v. *Ashton* (1843), 5 Man. & G. 14). But a person is not entitled to the county franchise in respect of his tenancy of any house in a borough for which he is entitled to be registered as an inhabitant occupier under s. 3 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102) (see p. 163, *post*); *Chorlton* v. *Johnson, Bunting's Case* (1868), L. R. 4 C. P. 426.

SECT. 1. In Parliamentary Elections.

of the county occupation franchise, and at an election for such borough in respect of the borough occupation franchise (*a*). There are, however, some differences between the cases of counties and boroughs.

(a) *Counties* (*b*).

Requirements in counties.

332. In order to be qualified to be registered on this franchise in a county (*c*) a person must satisfy the following conditions:—

I. He must on the 15th July (*d*) in the year of registration, and during the twelve months immediately preceding that day, have been the occupier as owner or tenant of some land or tenement (*e*), including any part of a house separately occupied for the purpose of any trade, business, or profession (*f*), of the clear yearly value of not less than £10 (*g*), which premises must be within the county and not within any parliamentary borough (*h*).

II. He must during the time of such occupation have been rated (*i*)

(*a*) Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 5.

(*b*) The earliest qualification by occupation only for a vote in a county was created by what is known as the Chandos Clause in s. 20 of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45). That gave the franchise to every person of full age not subject to any legal incapacity who occupied as tenant any lands or tenements for which he was *bonâ fide* liable to a yearly rent of not less than £50. Such person was entitled to be registered as an owner. This clause was, however, repealed by the Representation of the People Act, 1884 (48 Vict. c. 3), s. 12, and Sched. II., save as regards persons registered in respect of the qualification on 6th December, 1884. Such a person has the right to continue to be registered as long as the qualification lasts, but if he is entitled to be registered as a £10 occupier he can only be registered as such (*ibid.* s. 10). It is possible that the qualification may still be of some importance. If, however, anyone is still entitled to be registered under it, which is believed not to be the case, he must be registered as an occupier, not as an owner (Registration Act, 1885 (48 & 49 Vict. c. 15), s. 11). He must have occupied for twelve months before 15th July in the year he claims to be registered (Representation of the People Act, 1832 (3 & 4 Will. 4, c. 45), s. 26). He must actually occupy as tenant (*Burton* v. *Langham* (1848), 5 C. B. 92). Different rents payable to different landlords cannot be joined so as to qualify (*Gadsby* v. *Barrow* (1844), 7 Man. & G. 21). If two or more persons jointly are such occupiers, and the rent is such as to give £50 or more for each occupier, each such occupier is entitled to be registered as an elector (Registration Act, 1843 (6 & 7 Vict. c. 18), s. 73).

(*c*) Representation of the People Act, 1884 (48 Vict. c. 3), ss. 5, 7 (6) (re-enacting, with alteration of £12 aggregate rateable value to £10 clear yearly value, s. 6 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), repealed by the latter Act).

(*d*) Altered from last day of July to the 15th by the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 7, and extended to counties by the Registration Act, 1885 (48 & 49 Vict. c. 15), s. 12.

(*e*) See *Hall* v. *Metcalfe*, [1892] 1 Q. B. 208; see p. 160, *post*.

(*f*) Representation of the People Act, 1884 (48 Vict. c. 3), s. 11.

(*g*) Formerly aggregate rateable value of £12 (s. 6 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102)). It was held that the rate-book was not conclusive evidence of this (*Cooke* v. *Butler* (1872), L. R. 8 C. P. 256). On the authority of *Huckle* v. *Piper* (1871), L. R. 7 C. P. 193, decided on that section, it is presumed that the qualifying land etc. need not be occupied in one holding or under the same landlord, and that it is sufficient if the aggregate clear yearly value of lands amounts to £10, and the occupier has been rated to all rates made during his occupation in respect of the several pieces of land so occupied by him respectively.

(*h*) Representation of the People Act, 1884 (48 Vict. c. 3), ss. 5, 6.

(*i*) Where the name of a firm only appeared on the rate-book the members

in respect of the premises so occupied by him to all rates (if any) made for the relief of the poor in respect of the said premises (*k*).

III. He must on or before the 20th day of July in the same year have paid, by himself or someone else, all poor rates that have become payable by him in respect of the said premises up to the preceding 5th day of January (*k*).

Rates.

333. Where premises are in the joint occupation of several persons as owners or tenants, and the clear yearly value of such premises is such as would, if divided among the several occupiers, so far as the value is concerned, confer on each of them a vote, then each of such joint occupiers is, if otherwise qualified, and subject to the statutory conditions, entitled to be registered as a voter, and, when registered, to vote at an election for the county. But not more than two persons, being such joint occupiers, are entitled to be registered in respect of such premises, unless they have derived the same by descent, succession, marriage, marriage settlement or devise, or unless they are *bonâ fide* engaged as partners carrying on trade or business thereon (*l*).

Joint occupiers.

334. Different premises occupied in immediate succession by any person as owner or tenant during the twelve months next previous to the 15th day of July in any year are to have the same effect in qualifying such person to vote for a county as a continued occupation

Successive occupation.

of the firm who paid the rates were held to be rated within s. 6 (3) of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), the inaccuracy of description, if any, being cured by s. 75 of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), and s. 30 of the Parliamentary Electors Registration Act, 1868 (31 & 32 Vict. c. 58). The latter section extends to counties; the former enacts in effect that where a person has *bonâ fide* been called upon to pay rates, and has done so, he is entitled to be registered, any misnomer or inaccurate or insufficient description notwithstanding (*Little* v. *Penrith Overseers* (1872), L. R. 8 C. P. 259). See also *Huckle* v. *Piper* (1871), L. R. 7 C. P. 193.

(*k*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 6. See p. 170, *post*.

(*l*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 27, as amended by the Representation of the People Act, 1884 (48 & 49 Vict. c. 3), ss. 5, 11, 12. Two persons, being lessees of a house at the annual rent of £20, claimed to be put on division I. as joint occupiers of offices there. The remainder of the house was occupied by a man and wife, the wife being employed by the claimants as caretaker, and the man was on division II. in respect of his occupation. The court decided that on the case as stated there was a person already on the list as occupying tenant and that therefore the claim was bad, as to put the claimants on the register would involve the allowance of a vote to three persons in respect of a £20 qualification, which was only sufficient for two (*Kirby* v. *Barber* (1905), 1 Smith, Reg. Cas. 403. *Quære, ibid.*, whether the claimants would have been qualified if the other occupier's qualification had been in respect of the service franchise.) As to partners, it was held in *Harris* v. *Amery* (1865), L. R. 1 C. P. 148, that farming is a business within the Companies Act, 1862 (25 & 26 Vict. c. 89), s. 4 (prohibiting the formation of partnerships of more than twenty persons), and that where partners cannot prove that they occupy as tenants without disclosing a partnership thereby illegal they are not qualified.

Notwithstanding the proviso in the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3, if a dwelling-house is of the annual value of £20, two part occupiers are entitled to this franchise (*Druitt* v. *Gossling* (1888), Fox & S. Reg. 123. See also *Bagley* v. *Butcher* [1898] 1 Q. B. 67, following *Townshend* v. *St. Marylebone Overseers* (1871), L. R. 7 C. P. 143).

SECT. 1. In Parliamentary Elections.

of the same premises in the manner provided (*m*). The occupier must have paid before the 20th July all rates which have become payable from him up to the 5th January in respect of all such premises occupied by him in succession (*a*).

(b) *Boroughs.*

Boroughs.

335. The following are the essential requirements for registration in a borough:—

I. The person must on the 15th July (*b*) in the year of registration, and during the twelve months immediately preceding that day, have been the occupier as owner or tenant (*c*) of some land or tenement (*d*), including any part of a house separately occupied for the purpose of any trade, business, or profession (*e*) within a borough, of the clear yearly value of not less than £10 (*f*).

Rates.

II. He must also during the time of such occupation himself or by someone else have been rated in respect to the land or tenement so occupied by him to all rates (if any) made for the relief of the poor in respect thereof during the twelve months (*g*).

III. He must on or before the 20th day of July in the year of registration himself or by someone else have paid all the poor rates and assessed taxes which have become payable by him during the twelve months preceding the 15th day of January in the same year (*h*).

Residence.

IV. He must have resided (*i*) for six calendar months next previous to the 15th day of July in such year within the city or borough or within seven statute miles thereof or of any part thereof (*k*); but he is not disqualified by reason only that during part of the qualifying period, not exceeding four months at any one time, he has been absent in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him (*l*).

(*m*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 26.

(*a*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 28; Representation of the People Act, 1884 (48 Vict. c. 3), ss. 5, 11; *Campbell* v. *Chambers* (*Kempston's Case*) (1887), 22 L. R. Ir. 258, C. A.

(*b*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 7, which changed this date from 31st to 15th July.

(*c*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 27; Representation of the People Act, 1884 (48 Vict. c. 3), s. 11, see p. 162, *post*.

(*d*) Representation of the People Act, 1884 (48 Vict. c. 3), s. 5.

(*e*) *Ibid.*, s. 11.

(*f*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 27; Representation of the People Act, 1884 (48 Vict. c. 3), s. 5.

(*g*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 27; Representation of the People Act, 1884 (48 Vict. c. 3), ss. 5, 11.

(*h*) *Ibid.* For the law as to the effect of rating and the payment of rates on the right to vote, see p. 170 *et seq.*, *post*.

(*i*) This is the most important respect in which the law in regard to boroughs is different from that in regard to counties. For meaning of "reside," see pp. 164, 177, *post*.

(*k*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 27; Representation of the People Act, 1884 (48 Vict. c. 3), ss. 5, 11. In respect to the City of London this distance is twenty-five miles instead of seven (Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 46.

(*l*) Electoral Disabilities Removal Act, 1891 (54 & 55 Vict. c. 11), s. 2.

336. Where two or more persons are joint occupiers, and the clear yearly value of the premises when divided by the number of such occupiers is such as to give £10 or more for each occupier, each of them is entitled to be registered as a parliamentary elector (*m*). Joint occupiers.

337. A person who has occupied within the same borough different lands or tenements of the requisite value in immediate succession during the twelve months which are required for the qualification is entitled, in respect of the occupation thereof, to be registered as an elector in the parish or township in which the last-occupied land or tenement is situate (*a*). Where a borough is divided into several constituencies, the occupation in immediate succession of different premises within the borough has the same effect for the purpose of conferring this franchise as if all such premises were situated in that division in which the premises occupied at the end of the period are situated (*b*). The occupier must, however, have paid before the 20th July all rates which have become payable from him up to the 5th January in respect of all such premises (*c*). Successive occupiers.

(c) *In General.*

338. The qualification for the £10 occupation franchise is composed, both in counties and boroughs, of four elements: (1) Land or tenement; (2) value; (3) occupation; and (4) estate (*d*). General requirements.

"Land" in its legal signification comprehends any ground, soil, or earth whatsoever, and includes, moreover, not only the face of the earth, but everything under it or over it (*e*), and *primâ facie* it includes messuages, tenements and hereditaments, houses and buildings of any tenure (*f*). It is not necessary that there should be specific lines of demarcation, provided that the limits of holding are known to owners and occupiers (*g*).

(*m*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 29; Representation of the People Act, 1884 (48 Vict. c. 3), ss. 5, 11. In counties, as has been stated, only two joint occupiers are qualified, except in certain cases. This is another important point of difference between the county and borough qualifications.

(*a*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 28; Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 26; Representation of the People Act, 1884 (48 Vict. c. 3), ss. 5, 11. A break in the qualifying period disqualifies; see *Pitts* v. *Michelmore*, [1909] 2 K. B. 244; *Widdicombe* v. *Michelmore* (1910), 102 L. T. 134.

(*b*) Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), s. 10.

(*c*) See p. 170, *post*.

(*d*) *Per* ERLE, C.J., in *Cook* v. *Humber* (1861), 11 C. B. (N. S.) 33, at p. 41. This four-fold division does not take account of that other condition which in boroughs, though not in counties, is a necessary condition precedent to registration, namely, the condition of residence to the prescribed extent (see p. 158, *ante*). It is to be observed that when this judgment was delivered land did not qualify by itself.

(*e*) 2 Bl. Com. (ed. 1844), 18.

(*f*) Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3. But incorporeal hereditaments, it seems, do not qualify, for they are not capable of being occupied (see *Druitt* v. *Christchurch Overseers* (1883), 12 Q. B. D. 365), and all property that cannot be rated is excluded.

(*g*) *Hall* v. *Metcalfe*, [1892] 1 Q. B. 208. Here the lessee of a market sublet the area to occupiers of stands at annual rentals of over £10. The spaces occupied were not marked or inclosed, but the positions were known to the lessee, to the occupier, and to other occupiers.

SECT. 1
In Parliamentary Elections.

Tenement.

339. "Tenement," although in its strict legal sense signifying anything that may be holden (*h*), must, it is submitted, be taken for the present purpose to mean any house, warehouse, counting-house, shop, or other such building (*i*). If this is correct, it follows that anything added to the land which has to be taken into account in order to give the required value of £10 must be in the nature of a building (*k*). The terms "house," "warehouse" etc. comprise any part of a house, where that part is separately occupied for the purpose of any trade, business, or profession; and any such part may, for the purpose of describing the qualification, be described as "office," "chambers," "studio," or by any like term applicable to the case (*l*). Where an occupier is entitled to the sole and exclusive use of any part of a house, that part is not to be deemed to be occupied otherwise than separately by reason only of the fact that the occupier is entitled to the joint use of some other part (*m*).

It is not necessary that the qualifying premises should be occupied as one holding, or under one landlord; therefore different premises may be joined to qualify, provided the aggregate value is sufficient and other conditions are satisfied (*n*).

(*h*) Co. Litt. 6 a.

(*i*) Under the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 27, the occupation of land alone did not qualify, and the £10 occupation franchise was conferred on the occupier as owner or tenant of any house, warehouse or counting-house, shop, or other building. This section was repealed by s. 12 of the Representation of the People Act, 1884 (48 Vict. c. 3), except with regard to conditions made applicable by that Act; and s. 5 of that Act, which gives this franchise, gives it subject to the like conditions then existing. Again, s. 11 of the same Act is, so far as may be consistently with the tenor thereof, to be construed as one with the Representation of the People Acts. Presumably, therefore, s. 5 is to be read with s. 27 of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), though repealed, and therefore "tenement" as stated in the text is limited to the kinds of tenements described in the Act of 1832. The occupation of land without any building thereon qualifies (*Brogie* v. *M'Gowan*, [1907] S. C. 391).

(*k*) The following decisions on the meaning of "building" within s. 27 of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), may be noted. A cowhouse substantially built and suitable for its purpose was held to be a building (*Whitmore* v. *Bedford* (1843), 5 Man. & G. 9; and compare *Gitlam* v. *Harris* (1866), L. R. 1 C. P. 155 and *Trevor* v. *Fowle* (1879), Saint's Registration Cases, p. 328). A coachhouse and stable, neither being separately of the clear annual value of £10, but, taken together, being of the value and having no internal communication except by means of two grated windows, were held to be a building (*Jolliffe* v. *Rice* (1848), 6 C. B. 1). Likewise a row of continuous buildings without internal communication (*Pownall* v. *Dawson* (1851), 11 C. B. 9). In *Powell* v. *Farmer* (1865), 18 C. B. (N. S.) 168, a wooden structure, with boarded sides and a thatched roof, and supported by wooden posts, was used for storing potatoes. The court refused to review the revising barrister's decision that this was a building (*Watson* v. *Cotton* (1847), 5 C. B. 51, followed). *Contrà* where a political agent had erected a shed on land, there being no evidence that the landlord's permission had been obtained (*Powell* v. *Boraston* (1865), 18 C. B. 175). See also pp. 184 *et seq.*, *post*.

(*l*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5; see *Toms* v. *Luckett* (1847), 5 C. B. 23; *Downing* v. *Luckett* (1847), 5 C. B. 40; *Piercy* v. *Maclean* (1870), L. R. 5 C. P. 252.

(*m*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5.

(*n*) *Huckle* v. *Piper* (1871), L. R. 7 C. P. 193; and see *R.* v. *Steen*, [1905] 2 I. R. 574.

Value.

340. As to value, the qualifying premises must be of the "clear yearly value of not less than £10" (*o*). The sufficiency of value is a question of fact which has to be determined in case of dispute by the revising barrister, with whose determination the court will not interfere, unless he has given consideration to wrong principles (*p*). The test of value is what the premises would let for, *i.e.*, what a tenant would be likely to pay over and above the ordinary burdens of rating, taxation etc. which a tenant has to bear (*q*). The real question is, what is the market value of the premises, not what do they actually produce (*r*). And to arrive at such value no deduction from the rent which would be paid by a tenant should be made in respect of the landlord's expenses for repairs or insurance (*s*). If in the opinion of the revising barrister the premises are, in fact, of the yearly value of £10, the occupier's right to be registered is not affected by an erroneous assessment to rates by which the value appears to be less than that sum (*t*).

Meaning of "occupy."

341. An occupier is one who actually exercises the rights of an owner in possession during the requisite time (*a*). The primary element of occupation is possession, but it includes something more, for mere legal possession cannot constitute an occupation (*b*). The owner of a vacant house is in possession, though not in occupation; but if he furnishes the house and keeps it ready for habitation he is an occupier, though he never resides in it during the year (*c*). So a trader occupies premises by merely keeping his stock, tools, vehicles, or other goods upon those premises (*d*). A merchant or business man occupies an office or counting-house by using it during ordinary business hours by himself or his clerks for the purpose of his business (*e*). The occupation of a servant may be the occupation of the master for the purpose of qualifying the latter for the franchise (*f*), and a person may occupy by his family (*g*).

In every case, however, in order to qualify, the occupation must be exclusive in law, *i.e.*, the occupier must hold the premises free from limitation or restraint by other persons (*h*).

(*o*) Representation of the People Act, 1884 (48 Vict. c. 3), s. 5.
(*p*) *Coogan* v. *Luckett* (1846), 2 C. B. 182.
(*q*) *Ibid.* See *per* ERLE, J., and CRESSWELL, J.
(*r*) See *Astbury* v. *Henderson* (1854), 15 C. B. 251.
(*s*) *Colvill* v. *Wood* (1846), 2 C. B. 210.
(*t*) *R.* v. *Kidderminster Corporation* (1851), 2 L. M. & P. 201.
(*a*) *Cook* v. *Humber* (1861), 11 C. B. (N. S.) 33.
(*b*) *R.* v. *St. Pancras Assessment Committee* (1877), 2 Q. B. D. 581.
(*c*) *Ibid.*; *per* LUSH, J., at p. 588.
(*d*) *Powell* v. *Farmer* (1865), 18 C. B. (N. S.) 168; *Morish* v. *Harris* (1865), L. R. 1 C. P. 155; *Watson* v. *Cotton* (1847), 5 C. B. 51; *Jolliffe* v. *Rice* (1848), 6 C. B. 1; *Daniel* v. *Coulsting* (1845), 7 Man. & G. 122.
(*e*) *Downing* v. *Luckett* (1847), 5 C. B. 40; *Piercy* v. *Maclean* (1870), L. R. 5 C. P. 252.
(*f*) *Nunn* v. *Denton* (1844), 7 Man. & G. 66; *Dobson* v. *Jones* (1844), 5 Man. & G. 112, *per* TINDALL, C.J., at p. 120; *M'Clean* v. *Prichard* (1887), 20 Q. B. D. 285; *Brooks* v. *Baker*, [1906] 1 K. B. 11. But a master is not qualified by the occupation of a house by his servant when the house is the servant's dwelling-house so as to qualify him for the service franchise (*Jack* v. *Edie* (1906), 8 F. 329; and see p. 172, *post*).
(*g*) *R.* v. *Ditcheat* (*Inhabitants*) (1829), 9 B. & C. 196, at p. 185.
(*h*) *Downing* v. *Luckett*, *supra*, *per* WILDE, C.J.; see *Toms* v. *Luckett* (1847), 5 C. B. 23; *Piercy* v. *Maclean*, *supra*.

SECT. 1. In Parliamentary Elections.

Estate.

342. Lastly, in order to qualify for this franchise the occupier must have a certain estate in the lands or tenements, *i.e.*, he must occupy the premises as owner or tenant (*i*). Hence, where he occupies in some capacity, or by some right, which does not in law constitute him actual owner or tenant, he is not qualified (*k*). But where he occupies in the character of an owner or tenant, the court will not inquire whether in law he has a right to assume that character, or decide disputed questions of title between him and other persons; therefore, having occupied in such character, he is qualified (*l*).

And even where the contract of tenancy under which he occupies is forbidden by statute, inasmuch as it is the character of the occupation and not the legal right to assume that character which alone is to be considered, he is entitled to be registered (*m*). Again, the person claiming this franchise cannot be said to occupy as tenant unless he occupies the premises for his own benefit (*n*), and so the occupation of premises by a servant on behalf of his master cannot qualify the servant (*o*). But tenancy at will (*p*) or tenancy by sufferance (*q*) is sufficient.

(*i*) The expression "as owner or tenant" does not occur in s. 5 of the Representation of the People Act, 1884 (48 & 49 Vict. c. 3), the words of which are, "every man occupying any land or tenement in a county or borough in the United Kingdom of a clear yearly value," etc. S. 27 of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), however, which first created the £10 occupation franchise in boroughs, required that the occupation should be "as owner or tenant." S. 6 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), which created the £12 occupation franchise in counties, also provided that the occupier should occupy "as owner or tenant." Each of these provisions is repealed by s. 12 of the Representation of the People Act, 1884 (48 & 49 Vict. c. 3), which Act creates the franchise now being considered, assimilating in most respects the county and borough franchises. It is, however, provided by the last-mentioned section that the franchises conferred by the Act of 1884 are in substitution for the older franchises, and that the repeals are to have effect except so far as the repealed enactments contain conditions made applicable by the Act to the new franchise; and s. 11 provides that the Act, so far as may be consistently with the tenor thereof, is to be construed as one with the older Acts. Further, s. 18 of the Registration Act, 1885 (48 & 49 Vict. c. 15), provides for the use of certain forms and instructions, and the precept to the overseers of a parish in a borough (Sched. III., Part I., 5 (i.) (a)) in its definition of the person entitled to this franchise, required him to occupy "as owner or tenant." These forms and instructions are to be taken as expounding the intention of the legislature in the Act of 1884 (*per* Lord COLERIDGE, C.J., in *Stribling* v. *Halse* (1885), 16 Q. B. D. 246); see also p. 166, *post*.

(*k*) *Barton* v. *Longhorn* (1848), 5 C. B. 92, where the committee of the estate of a lunatic who occupied part of the land and accounted for rent, debiting himself therewith in the accounts of the estate, was held not to occupy as tenant.

(*l*) *Leonard* v. *M'Conn* (1888), 1 Laws. Reg. Cas. 87.

(*m*) *Glenn* v. *Brennan* (1894), 2 Laws. Reg. Cas. 10. In this case the person claiming to be qualified occupied land under a sub-tenancy made illegal by the Irish Land Acts. See also *Roulston* v. *Kerlin*, [1908] 2 I. R. 335, C. A.

(*n*) *Corcoran* v. *Barnard* (1857), 7 I. C. L. R. 374.

(*o*) *Dobson* v. *Jones* (1844), 5 Man. & G. 112; *Brooks* v. *Baker*, [1906] 1 K. B. 11.

(*p*) *Jones* v. *Houraban* (1887), 1 Laws. Reg. Cas. 58; *Mackay* v. *McGuire*, [1891] Q. B. 250.

(*q*) *Holland* v. *Chambers* (*O'Neill's Case*) (1894), 2 Laws. Reg. Cas. 9.

(iii.) *The Household Franchise.*

Household franchise.

343. The household franchise, which applies both to counties and boroughs, may be divided into two parts—the franchise of inhabitant occupiers who occupy either as owners or as actual tenants; and the service franchise, enjoyed by certain persons who, by Act of Parliament (*r*), are to be "deemed" inhabitant occupiers as tenants (*s*).

(a) *Inhabitant Occupiers as Owners or actual Tenants.*

Owners or actual tenants.

344. To entitle any person to be registered under this franchise it must be shown (1) that the person was on the 15th (*t*) day of July in the year of registration, and had been during the whole of the preceding twelve calendar months an inhabitant occupier as owner or tenant of any dwelling-house within the county or borough (*u*); (2) that he has during the time of such occupation been rated as an ordinary occupier in respect of the premises so occupied by him to all rates (if any) made for the relief of the poor in respect of these premises (*x*); and (3) that he has on or before 20th July in the same year *bonâ fide* paid by himself or someone else (*a*) an equal amount in the pound to that payable by other ordinary occupiers in respect of all poor rates that have become payable by him in respect of the premises up to 5th January preceding (*b*).

Dwelling-house.

345. In the case of this franchise value is immaterial; but, as in the case of the occupation franchise, the elements of tenement, occupation, and estate have to be considered. In the first place, then, the qualifying property must be a "dwelling-house," but that expression includes any part of a house where that part is separately occupied as a dwelling; and where an occupier is entitled to the sole and exclusive use of any part of a house, that part is not to be deemed to be occupied otherwise than separately (*c*) by reason only that the occupier is entitled to the joint use of some other part (*d*).

346. A person claiming this franchise must occupy (*e*) the dwelling-house by way of inhabiting it (*f*). A person inhabits

(*r*) See pp. 172 *et seq.*, *post.*

(*s*) Representation of the People Act, 1884 (48 & 49 Vict. c. 3), which, by s. 2, established a uniform household franchise for boroughs and counties and extended s. 3 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), to counties.

(*t*) The date was altered from the last day of July to the 15th by the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 7, and the Registration Act, 1885 (48 & 49 Vict. c. 15), s. 12.

(*u*) Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 2.

(*x*) *Ibid.*

(*a*) See p. 170, *post.*

(*b*) Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 2.

(*c*) For the meaning of "separately," see p. 168, *post.*

(*d*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5.

(*e*) As to the meaning of "occupying" in general, see p. 161, *ante.*

(*f*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 2; Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 2.

SECT. 1. In Parliamentary Elections.

Inhabitancy.

a house if he dwells in it or resides in it (*g*); and to prove his right to this franchise he must show that he has occupied a house by inhabiting it for the whole of the qualifying year (*f*). It is not necessary, however, that he should in fact live in the house during the whole 365 days; it is sufficient if he inhabits it constructively, having an intention of returning after a voluntary absence, and the power to return at any time without breach of any legal obligation (*h*). Subject to certain exceptions stated below, if he is absent for any period during the year without the legal power of returning at will during that period, he has not inhabited the dwelling-house for the qualifying year (*i*). Hence a person who is sentenced to, and has served, a term of imprisonment during the year is disqualified (*k*), and so is one confined in a lunatic asylum (*l*).

But a man is not disqualified by the fact that he has by letting or otherwise permitted his house to be occupied as a furnished house by some other person during a part of the qualifying period not exceeding four months in the whole (*m*). Nor is he disqualified

(*g*) *Atkinson* v. *Collard* (1885), 16 Q. B. D. 254, *per* CAVE, J., at p. 266; *Durant* v. *Carter* (1873), L. R. 9 C. P. 261. "Reside" and "inhabit" mean the same (*ibid.*). See p. 177, *post.*

(*h*) *Atkinson* v. *Collard, supra; Durant* v. *Carter, supra.* A person may reside in several houses at the same time, where he can live at each when he pleases (*Taylor* v. *St. Mary Abbott Overseers* (1870), L. R. 6 C. P. 309).

(*i*) *Tanner* v. *Carter* (1885), 16 Q. B. D. 231. In this case undergraduates who occupied rooms in college in term time, but which by the regulations they could not occupy during vacation without special permission, were held not to be entitled to the vote (*Atkinson* v. *Collard, supra; Ford* v. *Barnes* (1885), 16 Q. B. D. 254; *Spittall* v. *Brook* (1886), 18 Q. B. D. 426).

(*k*) See *Powell* v. *Guest* (1865), 18 C. B. (N. S.) 72. The law as to the effect of imprisonment on inhabitancy is by no means settled. The cases have been chiefly Irish. Thus, in *Donnelly* v. *Graham* (1888), [1897] W. N. 103, the occupier was sentenced for a criminal offence to fourteen days' hard labour with the option of a fine. He did not pay the fine and served the term. It was held that he had broken the required period of occupation and was not entitled to be registered. In *Martin* v. *Hanrahan* (No. 2) (1888), [1897] W. N. 103, the occupier was charged with felony on a Saturday and remanded in custody till Monday. He was then found guilty, but discharged without further punishment. He was held to be disqualified. On the other hand, in *Holland* v. *Hagan* (1894), [1897] W. N. 108, the occupier was arrested and brought before justices next day. He was then sentenced to fourteen days' imprisonment, with the option of a fine, and paid the fine. It was held that he was not disqualified, as the law would not consider the fractions of days on which he was compulsorily absent. In *Charlton* v. *Morris* (1894), [1897] W. N. 107, the occupier was arrested and committed for trial without bail. When the revision court was held his trial had not yet taken place, and as until conviction he should be assumed to be innocent, he was held not to be disqualified. In *Connolly* v. *Riddall* (1888), [1897] W. N. 103, the occupier was arrested and remanded to prison for a week on his refusing to give bail for his appearance. At the end of the week he was discharged. Held, no disqualification. In each of the last two cases FITZGIBBON, L.J., dissented from the majority of the court on the ground that innocence or guilt could not affect the fact of occupation, and that a man cannot be said to inhabit his dwelling-house when he is, justly or unjustly, compulsorily inhabiting a prison. In Scotland the judges have taken a totally different view from that taken in Ireland. Thus, in *Watt* v. *McGuire* (1888), [1897] W. N. 109, the occupier, who served a term of five months' imprisonment during the qualifying year, his family continuing to live in his house during the time, was held not to be disqualified.

(*l*) *McCullagh* v. *Graham* (1890), 1 Laws. Reg. Cas. 36.

(*m*) The disability was removed by the House Occupiers Disqualification

by reason only that during part of the qualifying period, not exceeding four months at any one time, he has, in the performance of any duty arising out of or incidental to any office, service, or employment held or undertaken by him, been absent from his dwelling-house (*n*).

Successive occupation.

347. Different premises occupied in immediate succession by any person as owner or tenant during the qualifying year have the same effect in qualifying that person for this franchise as a continued occupation of the same premises in the manner required (*o*). It is necessary, however, that he be actually rated in respect of each house so occupied, as well as that he should have paid all rates demanded or prescribed to the extent stated above (*p*). A person entitled to the service franchise is deemed to be a tenant (*q*); hence, a person occupying a house for part of the year so as to qualify him for that franchise, and for the rest of the year occupying another house as *de facto* tenant, is entitled to be registered (*r*). But a lodger is not a tenant in the sense required to confer this franchise (*s*); therefore a person who has occupied for part of the year as a lodger and then becomes a tenant is not qualified (*a*). Where a borough is divided into several constituencies, the occupation in immediate succession of different premises within the borough has the same effect for the purpose of conferring this franchise as if all such premises were situated in that division of the borough in which the premises occupied at the end of the qualifying period are situated (*b*).

Removal Act, 1878 (41 Vict. c. 3), s. 2; and see *Rowland* v. *Pritchard* (1893), 62 L. J. (Q. B.) 319, also *Ford* v. *Pye* (1873), L. R. 9 C. P. 269. It is clear from the precept that this applies to the case of counties as well as boroughs, though owing to the preamble this might have been doubted. The justification for the precept is to be found in the assimilation brought about by the Representation of the People Act, 1884 (48 Vict. c. 3), s. 5.

(*n*) The disability was removed by the Electoral Disabilities Removal Act, 1891 (54 Vict. c. 11), s. 2. A militia sergeant while in training in camp was sentenced to forty-eight hours' imprisonment for drunkenness. He was held not to be thereby disqualified as an inhabitant occupier in respect of his dwelling-house (*O'Connor* v. *Holland*, [1900] 2 I. R. 448. See also *Larcombe* v. *Simey*, [1907] 1 K. B. 139). A special Act was passed (Electoral Disabilities (Military Service) Removal Act, 1900 (63 Vict. c. 3), ss. 1, 3, applying only during the continuance of the South African war) enacting that a person should not be disqualified by reason only that during the whole or any part of the qualifying period he had, as a member of the reserve, militia, yeomanry or volunteer forces, been absent on actual military service on behalf of the Crown whether beyond the seas or not. Where a volunteer was not serving in South Africa during the whole of the qualifying period (peace being signed on 15th June, 1902) it was held that his absence was covered by the above section up till 15th June, and by the 1891 Act for the remainder of the period (*Marsh* v. *Bantoft* (1902), 88 L. T. 230). The Act is now obsolete, but it is important to note it as inferences may arise from the fact that it was found necessary to pass it.

(*o*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 26.

(*p*) *Pitts* v. *Michelmore*, [1909] 2 K. B. 244, C. A.; *Widdicombe* v. *Michelmore* (1910), 102 L. T. 134. As to rating, see p. 170, *post*.

(*q*) Representation of the People Act, 1884 (48 Vict. c. 3), s. 3. See p. 172, *post*.

(*r*) *Nicholson* v. *Yeoman* (1889), 24 Q. B. D. 145.

(*s*) See p. 168, *post*.

(*a*) *Falconer* v. *Lessels* (1890), 18 R. (Ct. of Sess.) 351.

(*b*) Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), s. 10. This applies to occupation in any character except that of lodger (*ibid.*).

SECT. 1. In Parliamentary Elections.

Interest in qualifying property.

348. An inhabitant occupier is not qualified for this franchise unless the occupation is as owner or tenant (*c*) and is a separate occupation (*d*). It has been held that the mere fact of occupation being eleemosynary in its character is not necessarily inconsistent with occupation as owner (*e*); but special circumstances may appear which make it clear that occupiers of premises in institutions of a charitable nature cannot be regarded as owners (*f*), as for instance in cases where the possession of the buildings is that of trustees (*g*).

Tenancy agreement must be proved.

349. A person claiming this franchise as tenant must prove some agreement, express or implied, which clothes him with that character; and the mere fact that he supports the owner and pays the expenses of the household will not suffice (*h*). A person who is

(*c*) See note (*i*), p. 162, *ante*. For the meaning of "owner or tenant" see also p. 162, *ante*.

(*d*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5.

(*e*) In *Fryer* v. *Bodenham* (1869), L. R. 4 C. P. 529, the claimants had occupied during the qualifying period one of several houses known as Lord Coningsby's hospital (founded 1614), had been separately rated, and had paid all poor rates due in respect thereof. According to the rules the occupiers, called "servitors," who were subject to the superintendence of a corporal, were nominated by A., the owner of the Coningsby estates, out of which fixed payments were made to them. A. could vary the rules. The servitors paid no rent, and clothes and coals were supplied to them out of the funds. The houses were situate in a quadrangle entered by an iron gate, the key of which was kept by the corporal. The gate was locked at 9 p.m., after which time none of the inmates could go beyond the limits of the hospital without the corporal's leave. None of the houses had ever been let by any of the persons appointed to them; but a garden outside the hospital and appertaining to the house held by one of the inmates had been let by him because he was too old to cultivate it himself. When a man was appointed to one of the houses he held it and a garden near to it for life, and could not be disturbed in his occupation by A. or anyone else, except for murder or felony or the like. It was held (following *Simpson* v. *Wilkinson* (1844), 7 Man. & G. 50, and *Roberts* v. *Percival* (1864), 18 C. B. (N. S.) 36) that the occupier of the houses in question, having a freehold for life, occupied as owners (within s. 3 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), and the circumstance of the endowment being more or less eleemosynary in its character did not deprive them of the franchise. See also pp. 145 *et seq*, *ante*.

(*f*) In *Heath* v. *Haynes* (1857), 3 C. B. (N. S.) 389, it was held that inmates of charitable institutions appointed for life subject to removal for breach of rules, and rated in respect of their several occupations, do not occupy as owners or tenants.

(*g*) See *Heartley* v. *Banks* (1858), 5 C. B. (N. S.) 40 (Military Knights of Windsor). It is to be noted that the distinction was drawn in *Fryer* v. *Bodenham* (1869), L. R. 4 C. P. 529, that in *Heartley* v. *Banks*, *supra*, the houses were in the possession of trustees. See *Durant* v. *Kennett* (1869), L. R. 5 C. P. 262 (Naval Knights of Windsor), also *Bridgewater* v. *Durant* (1861), 11 C. B. (N. S.) 7 (Lay Clerk of Windsor), and *Freeman* v. *Gainsford* (1861), 11 C. B. (N. S.) 68.

(*h*) *Loveridge* v. *Gardom* (*Gillo's Case*) (1899), 1 Smith, Reg. Cas. 186. The claimant in this case occupied with his wife and family a house of which his mother was owner. She had no other means of support. She was entered in the rate-book as occupying owner. The son was the breadwinner and maintained the household and paid the rates and taxes. It was held that there was no evidence that he occupied as owner or tenant. But in a similar case where the mother's name was on the rate-book—the house being one of which the father, then deceased,

liable to pay rent may be regarded as a tenant (*i*); and so may a tenant at will (*k*) or a tenant by sufferance (*l*). If the occupier loses his interest as tenant during the year so as to continue in possession merely as a trespasser, he loses his qualification (*m*); but a change in the character of his tenancy does not disqualify if there has been no breach in the occupation (*n*).

Joint occupation.

350. No man is entitled to be registered as a voter under this franchise by reason of his being a joint occupier of any dwelling-house (*o*). But although those who occupy as joint owners or joint tenants are not entitled to this franchise, they may be entitled to the occupation franchise if the value of the dwelling-house is sufficient (*p*). If two persons are in fact joint owners of a dwelling-house they cannot qualify for the household franchise by occupying parts of the house separately (*q*). Whether a person is an inhabitant occupier as owner or tenant will depend upon all the circumstances of the case (*r*).

had been the tenant—but the son paid the rates and taxes and the rent, it was held that there was evidence that the son occupied as tenant (*Loveridge* v. *Gardom* (*Matthews' Case*) (1899), *ibid.* 187).

(*i*) Lord RUSSELL OF KILLOWEN in the case last mentioned applied the test of whether the son could resist a claim for rent, and answered that he could not. The mere fact that a man pays the rates and household expenses affords no evidence that he occupies as tenant if the other facts point to the conclusion that his wife is the occupier (*Hall* v. *Michelmore* (1901), 65 J. P. 759; *Prentice* v. *Markham* (1892), Fox & S. Reg. Cas. 301). *Aliter* where the husband had entered into a legal agreement to pay his wife rent for the premises (*Pearce* v. *Merriman*, [1904] 1 K. B. 80). See also *Milne* v. *Murray*, [1907] S. C. 396.

(*k*) *Mackay* v. *McGuire*, [1891] 1 Q. B. 250.

(*l*) *Holland* v. *Chambers* (*O'Neill's Case* (1894), 29 I. L. T. 26.

(*m*) *Strachan* v. *Binnie* (1888), [1897] W. N. 99. Weekly tenants who had been served with a notice to quit continued in possession and were served with a summons for possession. In some cases before the decree, and in other cases after it, a new contract of tenancy was made, by which it was provided that the new tenancy should be deemed to have commenced on the expiration of the old one. It was held that the new contract was not capable of relating back for the purposes of the franchise, and that none of the weekly tenants were entitled to be registered (*Holland* v. *Chambers* (*Devine's Case*), [1894] 2 I. R. 442).

(*n*) Where a claimant in respect of the occupation of a house in a borough as a yearly tenant was adjudicated a bankrupt during the qualifying period, and the landlord continued to receive rent from him and allowed him to continue in undisturbed possession during the remainder of the qualifying period, the court decided that there had been a continuous occupation, the claimant being still tenant of his landlord and not the licensee of the trustee in bankruptcy (*Mackay* v. *McGuire*, [1891] 1 Q. B. 250).

(*o*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3. See *Milne* v. *Brunton*, [1909] S. C. 912.

(*p*) *Druitt* v. *Gosling* (1888), 58 L. J. (Q. B.) 109.

(*q*) *Alexander* v. *Burke* (1887), [1899] W. N. 178, C. A.

(*r*) Thus, where the occupier of licensed premises, who had been the tenant of the premises, entered into an agreement to serve the owners as their manager at a weekly salary, no notice to determine the tenancy being given, but no further rent being paid, it was held that the agreement operated as a surrender in law of the tenancy of the premises and created no new tenancy. In these circumstances the respondent was held not to be an inhabitant occupier as owner or tenant, but to be entitled only to the service franchise (*Kent* v. *Fraser*, (1897), 61 J. P. 359).

SECT. 1. In Parliamentary Elections.

Service.

351. Where a person occupies his house by virtue of his service, he is not a tenant though he may be deemed to be a tenant for the purpose of the parliamentary franchise (*s*), and the test to be applied in deciding whether he is *de facto* an occupier as tenant or a person to be deemed such as possessing a qualification for the service franchise is whether he is required or merely permitted so to occupy it (*t*).

Tenant of part of a house.

352. Although the term "dwelling-house" includes any part of a house separately occupied as a dwelling as above stated, yet the dwelling-house franchise is not acquired by the tenant of part of a house thus occupied by him unless he occupies independently of his landlord's control and so as to be rateable (*u*). In the case where he actually has a physically separated tenement, whether the houses are placed side by side, or one above the other, as in the case of what are usually termed flats, the claim will be in ordinary cases substantiated (*a*). Where, however, there is no such physical separation, it may nevertheless be proved that the person in question has a right to separate control of a separate tenement (*b*). Exclusive use does not necessarily imply exclusive or separate occupation (*c*).

Distinction between inhabitant occupiers and lodgers.

353. In practice the great difficulty is to decide the difference between an inhabitant occupier and a lodger, the distinction depending on the terms on which, as between himself and his landlord, the tenant occupies; which terms have to be ascertained in the first instance as a question of fact, though the inference to be drawn from

(*s*) Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 3.

(*t*) Thus, in *Hughes* v. *Chatham Overseers* (1843), 5 Man. & G. 54, the master rope-maker in a royal dockyard had as such the exclusive use as part remuneration for his services of the premises in question, no part thereof being used for public purposes, and he lived there rent free. If he had not had this privilege he would have received an allowance for his house in addition to his salary. It was held that he occupied as tenant. In *Dobson* v. *Jones* (1844), 5 Man. & G. 112, the surgeon of a hospital, who was required to occupy the premises in question with a view to the more efficient performance of his duties, was held not to occupy as tenant. In the *Petersfield Case* (1874), 2 O'M. & H. 94, 97), a claimant was in receipt of wages at the rate of 16*s*. a week, from which 1*s*. was deducted every week for the rent of the house in which he lived. His duty was to look after the cattle on the farm, but this he could not do unless he lived in this house. It was held that he occupied as tenant, but MELLOR, J., afterwards said that he "had been a little hasty" in allowing the vote. See further as to this subject, p. 172, *post*.

In *Marsh* v. *Estcourt* (1889), 24 Q. B. D. 147, labourers were permitted, but not required, to live in cottages on the farm of their employers on the terms that they were to give up possession when their employment ceased. They were either charged a reduced rent or had the rent deducted from their wages. The rates were paid by their employers, and the names of the claimants appeared in the rate-book as occupiers. It was held that they occupied not by virtue of service, but as householders; see also *Smith* v. *Seghill Overseers* (1875), L. R. 10 Q. B. 422; *Dover* v. *Prosser*, [1904] 1 K. B. 84; note (*a*), p. 173, *post*.

(*u*) *Bradley* v. *Baylis* (1881), 8 Q. B. D. 195, C. A. JESSEL, M.R., laid it down that the dominant elements are (1) rateability, and (2) absence of control over the premises by the landlord.

(*a*) *Bradley* v. *Baylis*, *supra*, *per* BRETT, L.J., at p. 232.

(*b*) *Bradley* v. *Baylis*, *supra*; *Kent* v. *Fittall*, [1906] 1 K. B. 60, C. A.

(*c*) *Bradley* v. *Baylis*, *supra*, *per* BOWEN, J., at p. 201.

the facts is a question of law (*d*). If the two aforesaid elements of (1) rateability and (2) an absence of control by the landlord over the premises can be found, a person is an occupier and not a lodger (*e*). The principle is as follows:—To entitle a person to the franchise in respect of the occupation of part of a house he must show that he occupies it separately. If another person is really in control of that part of the house, the person living in it has not a separate occupation. His occupation is on behalf of his landlord, and he is a lodger. On the other hand, if by agreement with his landlord he has an independent occupation which the landlord cannot control, his occupation is that of a tenant and entitles him to the franchise as an inhabitant occupier, provided he fulfils the other necessary conditions. It cannot be affirmed as a matter of law that the co-existence of the landlord as an occupier of another and a distinct subject-matter is a bar to the claim of the tenant to a separate tenancy, any more than if the landlord lived next door or in the next street. The law has created a thing which is capable of being the subject-matter of a separate tenancy, and the only bar to a claim in respect of it is that it has not been occupied in such a way as to show that the occupation has been free and uncontrolled. The occupation may be subject to stipulations, such for instance as would give the landlord a right to enter the tenement for the purpose of repair, but that is compatible with an independent occupation such as would give this franchise to the tenant. If the landlord is living in the house, that fact creates a presumption that the occupation of the other part is that of a lodger rather than that of an inhabitant occupier. But while that is the inference that may be drawn, it is not a necessary inference of law (*f*). It is a question of fact which the revising barrister (who is the final judge of fact in all cases as to the qualification of persons to be placed upon the register (*g*)) must decide for himself upon a consideration of all the circumstances—whether there is an absence of control in the sense above explained (*h*). Everything will depend on the exact circumstances of the case (*i*).

(*d*) *Kent* v. *Fittall*, [1906] 1 K. B. 60, C. A. As to the distinction between an inhabitant occupier and a lodger, see also p. 175, *post*, and *M'Bride* v. *Bryans*, [1908] 2 I. R. 329, C. A.; *Milne* v. *Brunton*, [1909] S. C. 912, and compare *Steele* v. *Mahon*, [1910] 2 I. R. 207.

(*e*) *Bradley* v. *Baylis* (1881), 8 Q. B. D. 195, C. A.

(*f*) *Kent* v. *Fittall*, *supra*, *per* COLLINS, M.R., at p. 67. Similarly *Morfee* v. *Novis* (1881), 8 Q. B. D. 195, C. A. The Irish case *M'Laughlin* v. *Chambers*, [1896] 2 I. R. 497, C. A., supports the view that control is the deciding principle.

(*g*) See p. 248, *post*.

(*h*) *Kent* v. *Fittall* (No. 2), [1908] 2 K. B. 933, C. A.

(*i*) In *Kirby* v. *Biffen* (1881), 8 Q. B. D. 195, C. A., where a house was entirely let out in small tenancies, the use of the passages, staircase, street door, and usual conveniences was in common; the landlord, and not the tenant, was rated, and the landlord did all the repairs inside and out, but he did not reside in the house, nor did he, save as aforesaid, retain the control and dominion over the house or render any services to any of the tenants. It was held that the tenant occupied as a tenant. In *Ancketill* v. *Baylis* (1882), 10 Q. B. D. 577, C. A., the facts were somewhat similar, with the exception that during the qualifying period the tenant of one of the rooms other than the claimant's, relinquished his tenancy and gave up the key of his room and his front door key to the landlord, who thereupon took the usual steps to obtain a new tenant of the vacant room. It was held that this did not give the landlord such control of

SECT. 1. In Parliamentary Elections.

Rating necessary.

354. To qualify for the household franchise it must be also shown that the occupier has during the time of his occupation been rated (*k*) as an ordinary occupier in respect of the premises so occupied by him to all rates, if any, made for the relief of the poor in respect of the said premises (*l*).

Since 1867 the general rule of law has been that the occupier ought to be rated instead of the owner (*m*); but in certain cases the owner may be rated instead of the occupier (*n*). Every payment of a rate by the occupier, notwithstanding that the amount may be deducted from his rent, and every payment of a rate by the owner, whether he is himself rated instead of the occupier or has agreed with the occupier or with the overseers to pay such rent, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rates, is to be deemed a payment of the full rate for the purpose of any qualification or franchise which, as regards rating, depends upon the payment of the poor rate (*o*).

How rate-book to be kept.

355. The overseers in making out the poor rate must in every case, whether the rate is collected from the owner or from the occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupiers' column of the rate-book the name of the occupier of every rateable hereditament, and such occupier is to be deemed to be duly rated for any qualification or franchise. If an overseer negligently or wilfully and without reasonable cause omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully misstates any name therein, he will be liable on summary conviction to a penalty not exceeding £2; but any occupier whose name has been so omitted is, notwithstanding such omission, entitled to every qualification and franchise depending on rating in the same manner as if his name had not been so omitted (*p*). This applies both to cases where the owner is liable by agreement with the overseers or by order of the local authority to pay the rates, and to cases where he is liable by agreement with the occupier to pay them (*q*).

the whole house that the other tenants became lodgers (BRETT, L.J.'s, judgment in *Bradley* v. *Baylis* ((1881), 8 Q. B. D. 195, C. A.) questioned). A man has not separate occupation when another has the right to pass through his rooms to reach another part of the house (*M'Bride* v. *Bryans*, [1908] 2 I. R. 329, C. A.; *Steele* v. *Mahon*, [1910] 2 I. R. 207, C. A.).

(*k*) A description in the rate-book of members of a firm by the name of the firm, without giving the names of the members, has been held a sufficient rating of the members, the facts of the case leading to the inference that they were the persons intended to be rated (*Little* v. *Penrith Overseers* (1872), L. R. 8 C. P. 259). The court were equally divided as to whether part of a dwelling-house separately occupied must, to acquire the franchise, have been separately rated to all rates in existence during the qualifying year or only to those made during such period (*Boon* v. *Howard* (1874), L. R. 9 C. P. 277).

(*l*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3; Representation of the People Act, 1884 (48 Vict. c. 3), s. 2.

(*m*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7.

(*n*) See title RATES AND RATING, for compounding, and generally as to rating.

(*o*) Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 7.

(*p*) *Ibid.*, s. 19.

(*q*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 14; *Barton* v. *Birmingham Town Clerk* (1878), 2 Hop. & Colt. 393. This appears only to apply where someone is rated. Where the premises are not rated

SECT. 1. IN PARLIAMENTARY ELECTIONS.

Claiming to be rated.

356. If the overseers neglect or refuse to enter in the rate-book the name of any person who occupies any premises as owner or tenant, such person may claim to be rated (*r*), and upon his so claiming and actually paying or tendering on or before the 20th day of July the full amount of the rate (if any) due in respect of the premises on the preceding 5th day of January, he is entitled to be rated or to have his name put in the rate-book, and to be registered (other requirements being satisfied); and in case the overseers on such claim being made neglect or refuse to enter his name, he is nevertheless deemed to have been rated from the period at which the rate in respect of which he claims was made (*s*).

Successive occupiers.

357. In order to qualify for successive occupations (*t*) a person must have paid all rates payable by him up to the 5th day of January in respect of any of the premises, but he need not himself have been rated in respect of any occupation subsequent to the original one, provided a rate has in fact been made and someone has paid (*a*). When (as often happens where a person goes into a new house late in the qualifying period) no rate for the premises is made at all, and no claim to be rated is made, the occupier is not qualified (*b*).

Where house exempt from rating.

358. Where a dwelling-house (*c*) is exempt by law (*d*) from being rated, on the ground that it belongs to or is occupied on behalf of the Crown or on any other ground, a man who inhabits such a dwelling-house is not disqualified for being registered by reason that no one is rated in respect of such house, and no rates are paid in respect of it; but in spite of these facts the overseers must enter the house and the name of the occupier in the rate-book (*e*).

Payment of rates necessary.

359. An occupier is not entitled to this franchise unless the rates payable in respect of the qualifying premises have been paid, even though the owner, and not the occupier, is the person liable to pay the rates and though no notice of the rates being in arrear has

at all, see next paragraph. For the duties of overseers, see pp. 196 *et seq.*, *post*, and titles POOR LAW; RATES AND RATING.

(*r*) The claim may be served on an overseer or on a properly appointed assistant-overseer (*Caunter* v. *Addams* (1863), 15 C. B. (N. S.) 512). It need not be in any particular form, but must be so specific as to enable the overseers to identify the premises (*Torish* v. *Moore* (1894), 29 I. L. T. 25). The claim may be made in respect of the occupation of part of a house (*Allchurch* v. *Hendon Union*, [1891] 2 Q. B. 436; see *Thompson* v. *Ward* (1871), L. R. 6 C. P. 327). See, for rating generally, title RATES AND RATING.

(*s*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 30. Compare Compound Householders Act, 1851 (14 & 15 Vict. c. 14), s. 1; Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 19; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 14.

(*t*) See title RATES AND RATING.

(*a*) *Palmer* v. *Wade*, [1894] 1 Q. B. 268; *Wade* v. *Perkins* (1893), Fox & S. Reg. 338; *M'Gaffigan* v. *Riddall* (1890), 28 L. R. Ir. 257. As to liability for rates where there is a change of occupation within the period for which a rate is made, see the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 16, and title RATES AND RATING.

(*b*) *Pitts* v. *Michelmore*, [1909] 2 K. B. 244, C. A.

(*c*) Note that this provision does not apply to the occupation franchise in which rating is always necessary.

(*d*) As to property exempt from rating, see title RATES AND RATING.

(*e*) Representation of the People Act, 1884 (48 Vict. c. 3), s. 9 (9).

SECT. 1. In Parliamentary Elections.

been given to the occupier (*f*) as required by law (*g*). Everything included in the poor rate must be paid in full; for example, the education rate, which is part of the poor rate, must be paid (*h*). Actual payment of the rates is a condition precedent to registration in respect of the franchise (*i*). Tender is not equivalent to payment even though refusal of the tender amounts to misconduct on the part of the rate collector to whom the tender is made (*k*).

Whether a person has been sufficiently rated and whether the rates have been paid are questions of fact, which the revising barrister, who is the final judge of all such questions, will decide (*l*).

Rate paid must be full ordinary rate.

360. The rate to be paid must be an equal amount in the pound to that payable by other ordinary occupiers (*m*); therefore if an owner pays for the occupier a less amount, as the result of an illegal composition with the overseers, the occupier is not entitled to be registered, even though the landlord afterwards voluntarily pays the excess (*n*).

What rates must be paid.

361. All rates which the occupier is bound to pay in order to be qualified for this franchise must be paid on or before the 20th day of July in the year of registration (*o*); and the rates of which it is necessary to show payment are those made and allowed after the 5th day of January of the year preceding the qualifying year and payable up to the 5th day of January of the qualifying year (*p*).

(b) *The Service Franchise.*

Occupation by virtue of office or service.

362. A man who himself inhabits any dwelling-house in either a county or a borough by virtue of any office, service, or employment, which dwelling-house is not inhabited by any person under whom such man serves in such office, service, or employment, is deemed for the purposes of the franchise to be an inhabitant occupier of such dwelling-house as a tenant (*q*). The test whether a person is entitled to the ordinary household franchise or to the service franchise (*r*) is whether he is or is not required by the terms of his

(*f*) It was so held by the Irish court in *Clarke* v. *Buchanan* (*Carlin's Case*) (1886), [1898] W. N. 109.

(*g*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 28.

(*h*) A poor rate including an education rate having been duly made, an occupier refused to pay the education rate. It was held that he was not entitled to be registered as a voter (*Ash* v. *Nicholl*, [1905] 1 K. B. 139).

(*i*) *Kennedy* v. *Buchanan*, [1903] 2 I. R. 484, C. A.

(*k*) *Ibid.*; and compare *Bishop* v. *Smedley* (1846), 2 C. B. 90.

(*l*) *Powell* v. *Jones* (1864), 18 C. B. (N. S.) 83.

(*m*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3.

(*n*) *Durant* v. *Withers* (1873), L. R. 9 C. P. 257.

(*o*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3.

(*p*) *Ibid.*; *Cull* v. *Austin*, *Austin* v. *Cull* (1872), L. R. 7 C. P. 227, 229 (*Abel* v. *Lee* (1871), L. R. 6 C. P. 365, was there distinguished).

(*q*) Representation of the People Act, 1884 (48 Vict. c. 3), s. 3. Those persons are to be "deemed" to be occupiers as tenants who were decided not actually to be such in *Clark* v. *Bury St. Edmunds Overseers* (1856), 1 C. B. (N. S.) 23; *Fox* v. *Dalby* (1874), L. R. 10 C. P. 285. A break of inhabitancy by absence has the same effect on the service franchise as on the household franchise (*Larcombe* v. *Simey*, [1907] 1 K. B. 139; and see p. 165, *ante*).

(*r*) The importance of the distinction lies in the fact that if he is entitled only

employment or by the nature of his duties to occupy the premises. If he is merely permitted but not obliged to occupy the premises while he renders the service, then he does not occupy by virtue of such service, and is entitled to the ordinary household franchise, but where the nature of his duties makes it necessary for him to occupy the premises (*s*), or where he is required to so occupy by his contract of service, then he is entitled to the service franchise only (*a*). It is necessary for this qualification that the actual employer of the claimant should not himself inhabit the house; but a claimant is not disqualified by the residence in the house of a superior servant, whose orders to some extent he is bound to obey (*b*). Where a person is in the service of the Crown and occupies a dwelling-house by virtue of such service, he may be entitled to this franchise; and it is immaterial that his superior officer occupies another part of the premises (*c*). But in all cases, although a "dwelling-house" includes part of a house where that part is occupied separately as a dwelling, and the fact of another occupier having joint use of some other part does not prevent the first part from being occupied otherwise than separately (*d*), it is necessary for the person claiming this franchise to show such an absence of control by any other person over the premises as to constitute an exclusive occupation (*e*).

Must be occupied as a separate dwelling.

to the service franchise his occupation does not qualify him for the municipal vote. See p. 189, *post*. See also *Kent* v. *Fraser* (1897), 61 J. P. 359.

(*s*) *E.g.*, a gamekeeper required to occupy a lodge in the centre of the preserves in order to protect his employer's game (*Petersfield Case* (1874), 2 O'M. & H. 94, *per* MELLOR, J., at p. 98).

(*a*) *Dover* v. *Prosser*, [1904] 1 K. B. 84. In this case a schoolmaster was permitted but not required to reside in a certain house so long as he held the appointment of schoolmaster. No deduction was made in his salary on account of his residing in the house, nor was it necessary for him to reside in the house in order to perform his duties. It was held that he was entitled to the household franchise (see *Marsh* v. *Estcourt* (1889), 24 Q. B. D. 147). See p. 168, *ante*.

(*b*) An industrial trainer employed by guardians was allowed as part of his salary to have the exclusive occupation of a sitting-room and bedroom in the main building of the workhouse; the guardians used another room for a board-room; the master lived in other rooms in the building. Although the trainer could not stay out after 9 p.m. without the master's permission, the master had no power to suspend or dismiss him, but could only report to the guardians. It was held that the trainer was an inhabitant occupier under the above section, inasmuch as the workhouse was not inhabited by the guardians and the trainer was not serving under the master so as to disqualify him (*Adams* v. *Ford* (1885), 16 Q. B. D. 239; see also *Colquhoun* v. *Young* (1897), 25 R. (Ct. of Sess.) 101.

(*c*) In *Atkinson* v. *Collard* (1885), 16 Q. B. D. 254 (similarly *Sedgwick* v. *Neville* (1885), *ibid.*), a non-commissioned officer occupying rooms in barracks was held to be qualified.

(*d*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5.

(*e*) In *Stribling* v. *Halse* (1885), 16 Q. B. D. 246, a shop assistant occupied exclusively, by virtue of his employment, a furnished bedroom in a dwelling-house belonging to his employer. The house contained other bedrooms similarly inhabited by other persons in the employment, and a dining-room where the assistants took their meals in common. The inmates had no keys to their rooms. The employers did not inhabit the house, but had a resident caretaker, who executed general control, and a resident servant, not under the order of the assistants, who did the domestic service. In this case it was held that there was sufficient inhabitancy of a dwelling-house to qualify (followed in *M'Daid* v. *Bulmer*, [1907] 2 I. R. 345). But this view was dissented from in the Irish case of *Ladd* v. *O'Toole*, [1904] 2 I. R. 389, C. A.; see also *M'Quade* v.

SECT. 1. In Parliamentary Elections.

Successive occupation.

As has been stated (*f*) the occupation of different premises in immediate succession by any person as owner or tenant during the twelve calendar months previous to the 15th day of July in the year of registration has the same effect in qualifying such person to vote as a continued occupation of the same premises (*g*). A different character of the occupancy is immaterial, so that if the first of two houses so occupied in immediate succession be occupied by virtue of service and the second as a householder, the occupier will be duly qualified for the parliamentary franchise (*h*).

Rating.

Where a man inhabits a dwelling-house by virtue of any service in the sense above considered so as to be deemed to be an inhabitant occupier of such dwelling-house as tenant, and another person is rated or liable to be rated for such dwelling-house, the rating of such other person is deemed to be that of the inhabitant occupier for the purpose of qualifying for this franchise (*i*).

(iv.) *The Lodger Franchise.*

Occupation as lodger.

363. In order to qualify for registration under the lodger franchise as a parliamentary voter in any county or borough, the claimant must show that as a lodger he has occupied separately and as sole tenant (*k*) and has resided in lodgings (*l*) for the

Charlton, [1904] 2 I. R. 383, C. A. ; *Stribling* v. *Halse*, *supra*, was commented on adversely by Lord RUSSELL OF KILLOWEN, C.J., in *Barnett* v. *Hickmott*, [1895] 1 Q. B. 691, where the case turned upon the construction of s. 5 of the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26). A policeman occupied exclusively a cubicle in the dormitory of a police barrack. The cubicle was separated from the other cubicles by a partition, but was open at the top. The passage, ventilation and atmosphere of the dormitory were common to the whole dormitory. Each man was entitled to lock up his cubicle. It was held that the cubicle was not "part of a house separately occupied as a dwelling" within s. 5 of the above-mentioned Act. WILLS, J., said: "*Stribling* v. *Halse* has, I think, gone to the extreme length to which such cases can be carried and cannot be considered as governing any case which goes beyond the facts of that case. It cannot, I think, be considered an altogether satisfactory decision." In *Clutterbuck* v. *Taylor*, [1896] 1 Q. B. 395, C. A., the facts were substantially the same as in *Barnett* v. *Hickmott*, *supra*. The policemen had cubicles of the same description as therein ; they were subject to the superintendent, who had power to impose restrictions on the use of the cubicles (*Barnett* v. *Hickmott*, *supra*, was followed by Lord ESHER, M.R., and LOPES, L.J. (RIGBY, L.J., dissenting)). In *Laskey* v. *Michelmore* (1908), 98 L. T. 105, a coachman occupied rooms over the stables of his master. No part of the building containing the rooms and the stables was inhabited by the master. By his contract of service the man was required to, and did in fact, take his meals with the other servants in the adjoining house inhabited by his master. It was held that he was entitled to the parliamentary franchise. See also *Bannon* v. *Hanrahan*, [1900] 2 I. R. 455, C. A.

(*f*) See p. 165, *ante*.

(*g*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 26.

(*h*) *Nicholson* v. *Yeoman* (1889), 24 Q. B. D. 145, *per* Lord COLERIDGE, C.J., at p. 146. See p. 165, *ante*. See *Torish* v. *Clark* (*Monaghan's Case*) (1885), [1897] W. N. 102.

(*i*) Representation of the People Act, 1884 (48 Vict. c. 3), s. 9 (8).

(*k*) It is clear that the word "tenant" here bears a different and more popular meaning than it does in the phrase "owner or tenant" as applied to the household franchise, see *Thompson* v. *Ward* (1871), L. R. 6 C. P. 327, *per* BOVILL, C.J., at p. 357.

(*l*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 4; Representation of the People Act, 1884 (48 Vict. c. 3), s. 2. "Lodgings"

twelve months preceding the 15th day (*m*) of July in the year of registration, such lodgings being part of one and the same dwelling-house and of a clear yearly value, if let unfurnished, of £10 or upwards. Also it must be shown that he has claimed to be registered as a voter at the next ensuing registration of voters (*n*).

Who is a lodger.

364. This franchise is conferred on a man who is a tenant of the description of "lodger" as distinguished from a tenant who is an inhabitant occupier (*o*). It is extremely difficult to draw the line between these two classes; but the word "lodger" involves a personal relation existing between the lodger and his landlord (*p*), and some degree of control by the landlord over the manner of the lodger's occupation of the premises (*q*). A lodger must occupy the part of the house comprising his "lodgings" under a contract, and therefore a son merely permitted to occupy rooms in his father's house, without payment and under no agreement, is not a lodger (*r*).

Value of lodgings.

365. The lodgings must be of the clear yearly value of £10 or upwards if let unfurnished (*s*). This value is a question of fact to be decided in each case by the revising barrister (*t*);

includes any apartments or place of residence, whether furnished or unfurnished, in a dwelling-house (Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5).

(*m*) Altered from the last day of July by s. 7 of the Parliamentary and Municipal Registration Act, 1878 (40 & 41 Vict. c. 26), and s. 12 of the Registration Act, 1885 (48 & 49 Vict. c. 15).

(*n*) *Hersant* v. *Halse* (1886), 18 Q. B. D. 412, *per* Lord COLERIDGE, C.J.; *Jones* v. *Kent* (1888), 22 Q. B. D. 204, 207. In *Hersant* v. *Halse*, *supra*, it was held that neglect to make a claim cannot be waived by the overseers publishing the name in the list of lodgers (following *Cullen* v. *Patterson* (1885), 18 L. R. Ir. 274; and distinguishing *Davies* v. *Hopkins* (1857), 27 L. J. (C. P.) 6). As to the claim, see p. 207, *post*.

(*o*) For the distinction between a lodger and an inhabitant occupier, see p. 168, *ante*.

(*p*) *Ancketill* v. *Bayliss* (1882), 10 Q. B. D. 577, C. A., *per* LINDLEY, L.J.

(*q*) *Bradley* v. *Baylis* (1881), 8 Q. B. D. 195, C. A.; *Kent* v. *Fittal*, [1906] 1 K. B. 60, C. A.; In *Thompson* v. *Ward* (1871), L. R. 6 C. P. 327, BOVILL, C.J., at p. 360, said: "Generally speaking a lodger is a person whose occupation is of part of a house, and subordinate to and in some degree under the control of a landlord or his representative, who either resides in or retains the possession of or a dominion over the house generally, or over the outer door, and under such circumstances as that the possession of any particular part of the house held by the lodger does not prevent the house generally being in the possession of the landlord. . . . It is always important, in determining whether a man is a lodger, to see whether the owner of the house retains his character of master of the house, and whether he occupies a part of it by himself or his servants, and at the same time retains the general control and dominion over the whole house; and this he may do, though he do not personally reside on the premises." See also p. 168, *ante*.

(*r*) *Macdonald* v. *Dickson* (1888), [1897] W. N. 123. But a son living in his father's house and having by agreement the exclusive use of lodgings of the required value, for which the son gives neither money nor money's worth is entitled to the vote (*Brown* v. *Martin* (1885), [1897] W. N. 121). A shop assistant occupying a room in the house of his employer under an agreement to pay rent and not as part of his duty as a servant is a lodger (*Bennett* v. *Evans* (1892), 68 L. T. 765).

(*s*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 4.

(*t*) *Jenkins* v. *Grocott*, [1904] 1 K. B. 374; *Hamilton* v. *Ferguson* (1897), [1899] W. N. 169.

SECT. 1. In Parliamentary Elections.

and the only true test of value is what the lodgings will let for where the landlord gets as much rent as he can and the lodger pays as little as he can (*u*). The rateable value of the house in which the lodgings are situate is an element of value which may be taken into account, but it is not conclusive proof (*v*), and the situation of the house and all circumstances affecting the value should be considered (*w*). The fact that the lodger in addition to having the exclusive use of part of the house is entitled to the joint use with any other person of some other part, does not cause him to occupy his part other than separately (*x*). But in considering the value of the lodgings only that part of the lodgings are to be taken into account of which he has the exclusive use; so that if that part is less than the required value he cannot add to its value the value of the part of which he has the joint use in order to qualify for the vote (*y*).

Nature of occupation.

366. The person claiming this franchise must have occupied the same lodgings during the qualifying year (*a*); but lodgings occupied by a person in any year or in two successive years are not to be deemed different lodgings by reason only that in that year or in either of those years he has occupied some other rooms or place in addition to his original lodgings (*b*). And for the purpose of qualifying a lodger to vote, the occupation in immediate succession of different lodgings of the requisite value in the same house has the same effect as continued occupation of the same lodgings (*c*).

Joint occupiers.

Again, where lodgings are jointly occupied by more than one lodger and the clear yearly value of the lodgings if let unfurnished is of an amount which, when divided by the number of the lodgers, gives a sum of not less than £10 for each lodger, then each such lodger, if otherwise qualified, is entitled to be registered and to vote as a lodger, provided that not more than two persons being such joint lodgers, are entitled to be registered in respect of such joint occupation (*d*).

(*u*) *M'Crea* v. *Buchanan* (1889), [1898] W. N. 112. In this case the house was rated at £2 15*s*. only, but £12 a year was paid for unfurnished lodgings by a curate who would have found it difficult to find any other lodgings in the village. Probably no one but a curate would have desired to lodge in the village, so that the lodgings had a special value to a special class of tenant. It was held that the curate was entitled to be registered. At the same time it was pointed out that the real test is "value," not the rent actually paid.

(*v*) *Jenkins* v. *Grocott*, [1904] 1 K. B. 374. In that case the rateable value of the house was less than the amount alleged to have been paid by the lodger.

(*w*) *Ibid.*

(*x*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5.

(*y*) *Hay's Case* (*Gallagher* v. *Hay*) (1892), [1897] W. N. 134; *Gray* v. *Deuchar*, (1890), [1897] W. N. 123.

(*a*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 4.

(*b*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 6 (1).

(*c*) *Ibid.*, s. 6 (2). There is no provision for any person qualifying for a parliamentary vote by successive occupation of lodgings in different houses, see p. 165, *ante*.

(*d*) *Ibid.*, s. 6 (3). Where there are more than two joint lodgers, the law provides no machinery for selecting the two who are to be registered. The wife

Residence.

367. The claimant must also have resided in the lodgings during the qualifying year (*e*). It is not necessary, however, that he should have actually lived uninterruptedly in the lodgings during the whole period, or that the lodgings should be his only place of residence; it is quite sufficient if he has the power to occupy the lodgings when he pleases (*f*).

(v.) *Reserved Rights.*

(a) *Counties.*

Freeholders not of inheritance.

368. With regard to counties, any person seized on the 7th day of June, 1832, for his own life, or for the life of another, or for any lives whatsoever, of any freehold lands or tenements in respect of which he then had the right to vote (*g*), or in respect of which but for the Representation of the People Act, 1832 (*h*), he might acquire the right to vote, was given by the Act the right to retain or acquire such right so long as he should be so seized of the same lands or tenements, provided he be duly registered according to law (*i*). Hence it appears that a male infant seized of an estate for life or lives in lands or tenements of the value of 40*s*. a year on 7th June, 1832, and coming of age after that date, acquired the right to vote on coming of age, and retains that right so long as he remains seized of the qualifying property and continues to be duly registered. As such a person in the year 1910 need only be seventy-eight years of age, there may be still some surviving who possess this qualification.

of a man living with him in lodgings is not a joint lodger with him; nor does a man occupying lodgings otherwise than separately by reason of his wife living with him in such lodgings (*Hamilton* v. *Paton* (1898), [1899] W. N. 175).

(*e*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 4; see p. 164, *ante*.

(*f*) *Taylor* v. *St. Mary Abbott Overseers* (1870), L. R. 6 C. P. 309; *Bond* v. *St. George, Hanover Square Overseers* (1870), L. R. 6 C. P. 312. In the last-mentioned case, BRETT, L.J., quoted with approval what was said by ERLE, C.J., in *Powell* v. *Guest* (1865), 18 C. B. (N. S.) 72, 80, that "in order to constitute residence, a party must possess at least a sleeping apartment, but that an uninterrupted abiding at such dwelling is not requisite, and that absence, no matter how long, if there be the liberty of returning at any time, and no abandonment of the intention to return whenever it may suit the party's pleasure or convenience so to do, will not prevent a constructive legal residence." In the first of the above cases the claimant was an attendant upon a gentleman in bad health, and rooms were taken for him in the same house as the gentleman, in which he might and usually did sleep. He also had lodgings in another place where his wife and family lived and where he could sleep at any time, and where he did sleep at least once a week. In the second case the claimant had lodgings in London and a house in the country, which he kept up all the year. He occupied the lodgings for short periods for a few days or weeks whenever he chose, but lived most of his time elsewhere. In each case the claimant was held to be entitled to the franchise in respect of the lodgings. See also *Falconer* v. *Dunlop* (1890), W. N. [1897] 124; *Malcolm* v. *Browne* (1894) W. N. [1897] 124.

(*g*) Before the Act of 1832 all freeholders, whether seized of estates of inheritance or otherwise, who were seized of lands or tenements of the yearly value of 40*s*. were entitled to vote for counties (Stat. (1429) 8 Hen. 6, c. 7), p. 145, *ante*.

(*h*) 2 & 3 Will. 4, c. 43.

(*i*) *Ibid.*, s. 18. As to the need of registration, see p. 139, *ante*.

SECT. 1. In Parliamentary Elections.

(b) *Boroughs.*

Before Reform Act, local usages prevailed in boroughs.

369. Before the Reform Act, 1832, those districts only were called "boroughs" which sent one or more representatives to Parliament. A "city" was only a more considerable borough possessing a charter and being the centre of a bishop's see (*a*).

The right of voting for representatives of such cities and boroughs was not regulated by any fixed rule uniformly applying to the whole country, as in the case of counties; but almost every city and borough had a right of voting in some respects peculiar to itself, and which right could only be ascertained from its charters or Acts of Parliament and by inquiry into the local usages prevailing (*b*).

Except with regard to burgesses or freemen, freemen and liverymen, and freeholders and burgage tenants (to be dealt with presently), all rights of voting other than those conferred by the Act were abolished (*c*); but every person who on the 7th day of June, 1832, had a right to vote under any of the qualifications abolished was allowed to retain such right so long as he retained the qualification and satisfied the requirements as to registration (*d*). As it seems to be established that no person still survives who has retained any of these qualifications, it is needless to enter into any description of their incidents (*e*).

In some boroughs freeholders and burgage tenants were entitled to vote; but these rights also were extinguished, except in the case of cities and towns being counties of themselves (*f*), and except in the case of persons who had acquired the right to vote on or before 1st March, 1831, or who acquired it between that date and 7th June, 1832, by descent, succession, marriage, marriage settlement, devise, or promotion to any benefice in a church or by promotion to an office (*g*). Such persons also are believed to have now completely died out (*h*).

Freemen.

370. In many boroughs freemen and burgesses had and have a right to vote. Such freemen who were admitted or entitled to be admitted on 1st March, 1831, had their rights reserved to them subject to registration and other conditions mentioned below (*i*). These are also probably extinct. No person elected, made, or admitted a burgess or freeman since 1st March, 1831, otherwise than in respect of birth or servitude, is entitled to

(*a*) Westminster was an exception, for it seems to have had no charter and to have long ceased to be a bishop's see.

(*b*) The foregoing is abstracted from Heywood on Borough Elections (1797).

(*c*) Such persons were "Inhabitants," "Inhabitants paying scot and lot," "Potwallers" etc. See Heywood on Borough Elections.

(*d*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 33. This section was repealed by the Statute Law Revision Act, 1890 (53 & 54 Vict. c. 33), but by s. 3 any right already acquired was reserved.

(*e*) See Rogers on Elections, 17th ed. (1909), p. 168, where the learned editor states that after careful personal inquiry from all the revising barristers in England he has come to the conclusion that these voters are extinct.

(*f*) See p. 179, *post*.

(*g*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 35.

(*h*) See Rogers on Elections, 17th ed., p. 168.

(*i*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 32.

vote or be registered (*k*). But every person admitted a freeman since that date in respect of servitude (*l*), or admitted since that date in respect of birth where his right is derived from a person who was a freeman or entitled to be admitted a freeman on 1st March, 1831 (*m*), continues entitled to vote in an election for a member of Parliament for any such borough (*n*). He must, however, be duly registered (*o*); and he can only be registered provided he is on the 15th July (*p*) in the year of registration qualified in such manner as would entitle him then to vote if such day were the day of election, and provided he has resided (*q*) within the city or borough or within seven miles from the place therein where the poll was usually taken up to 1832, for six calendar months next previous to the said 15th July (*r*). The town clerk of every borough for which there was a freeman's roll in 1882 is bound to keep a list of freemen called the Freeman's Roll (*s*), which is to be open to public inspection and copies of which the town clerk must deliver to any person on payment of a reasonable price (*a*).

Freeholders in Bristol, Exeter, Nottingham, and Norwich.

371. In Bristol, Exeter, Nottingham, and Norwich (*b*) freeholders and burgage tenants (*c*) have by ancient usage the right to vote for members of Parliament. The Act has not taken away these rights so

(*k*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 32.

(*l*) The right is governed by the usage of the borough, but is usually obtained by serving as apprentice to a freeman for a fixed number of years (see *Lichfield, John Chidlow's Case* (1842), Bar. & Aust. 344). This apprenticeship must usually be to a trade, and if so an articled clerk to a solicitor is not entitled to admission, but apprenticeship to a profession may qualify in some boroughs (see *R.* v. *Marshall* (1787), 2 Term. Rep. 2; *R.* v. *Doncaster Corporation* (1828), 7 B. & C. 630).

(*m*) *Ibid.* This right is not restricted by the Act to one generation after the passing of the Act, though the right may be restricted in various ways by the custom of a particular borough. In 1864 a man claimed to be registered as a voter in Barnstable, which was then a parliamentary borough. He was able to prove that his grandfather was admitted a freeman in 1810; that his father was twenty-one years of age and entitled then to be admitted in April, 1831, and was actually admitted in May, 1831. It was held that the claimant was entitled to be admitted (*Gaydon* v. *Bencraft* (1864), 18 C. B. (N. S.) 11).

(*n*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 32.

(*o*) P. 139, *ante*.

(*p*) Date altered from 31st July by Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 7.

(*q*) For the meaning of "reside," see pp. 164, 177, *ante*.

(*r*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 32. If he is a burgess or freeman of a place sharing in the election for any city or borough the distance is measured from such place (*ibid.*).

(*s*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 203.

(*a*) *Ibid.*, s. 233 (5).

(*b*) See Registration Order, 1895, Sched. 3, Instruction 5 (1). Haverfordwest, in the county of Pembroke, is a county of itself, but by the Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), s. 2, and Sched. I., it ceased to return a member to Parliament, and by s. 7 a new parliamentary borough was formed of Pembroke and Haverfordwest. By this the freeholders of Haverfordwest ceased as such to have a vote for the new borough; see *James* v. *Ivemey*, [1901] 1 K. B. 193. As to Exeter, see *Ford* v. *Drew* (1879), 5 C. P. D. 59.

(*c*) Blackstone (citing Glanvil and Littleton) says that tenure in burgage is tenure in socage, and it is where the King or other person is lord of an ancient borough in which the tenements are held by a rent certain. It is therefore freehold tenure. The law with regard to the rights of voting of freeholders in

SECT. 1. In Parliamentary Elections.

far as estates of inheritance are concerned, and therefore in these four cities freeholders having estates of inheritance in lands or tenements have the right to vote (*d*). But any such person must be duly registered; and as a condition of registration he must have been in actual possession of his tenement or in receipt of the rent and profits thereof for his own use for twelve calendar months next previous to the 15th July (*e*) in the year of registration (unless the same has come to him at any time within that twelve months by descent, succession, marriage, marriage settlement, devise, or promotion to any benefice in a church, or to any office), and he must have resided for six calendar months next previous to the said 15th July within the city or within seven miles of any part thereof (*f*).

Value.

The value of the property necessary to qualify depends respectively on the usage of each city (*g*). In the case of Nottingham it was determined in 1710 by the House of Commons to be 40*s.* a year (*h*). In Bristol and Exeter it appears to be the same, while in Norwich there is no minimum value (*i*).

Freeholders not of inheritance.

With regard to those freeholders or burgage tenants having estates of freehold not of inheritance, no such person is entitled to vote in respect of lands or tenements of which he is seized for life or lives, unless he is in actual and *bonâ fide* occupation of the same, or unless the same came to him by marriage, marriage settlement, devise, or promotion to any benefice or office, or unless the same be of the clear yearly value of £10 (*k*) above all rents and charges payable out of or in respect of the same (*l*).

If any person is still alive who was seized of an estate for life or lives in qualifying property on the 7th June, 1832, and has continued so seized to the present time, his right to vote is reserved to him provided he be duly registered (*m*).

(c) *City of London.*

Freemen and liverymen of City of London.

372. In the City of London, in addition to all persons who possess the ordinary borough qualification, freemen and liverymen

counties applies in general as far as may be to those voters in cities which are counties of themselves; see p. 145, *ante*.

(*d*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 31.

(*e*) This date was altered from 31st to 15th July by s. 7 of the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26).

(*f*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 31. As to the meaning of "reside," see pp. 164, 177, *ante*.

(*g*) The statute "What sort of men shall be chosen," stat. (1429) 8 Hen. 6, c. 7, applies only to shires, not to cities or towns being counties in themselves; see p. 146, *ante*. The Parliamentary Elections Act, 1745 (19 Geo. 2, c. 28), clearly recognises in s. 13 that there are such cities or towns where the burgage tenants have a right to vote in respect of tenements of less value than 40*s.* S. 4 of the same Act forbids any person in such cities or towns where the limit is 40*s.* to vote unless they have a freehold estate of the clear yearly value of 40*s.* above all rents and charges.

(*h*) (1701), 13 Commons' Journal, 611.

(*i*) See Rogers on Elections, 17th ed. (1909), at p. 171.

(*k*) In the case of counties this amount was altered to £5 by s. 5 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), but the amount remains £10 in the case of the cities now being considered.

(*l*) Representation of the People Act, 183 (2 & 3 Will. 4, c. 45), s. 18.

(*m*) *Ibid.*

are entitled to vote for members of Parliament for the City. Before 1832 these persons had such a right, and the right was reserved to them by the Reform Act (*n*). The right to vote depends on the person being both a freeman of the City and a liveryman of one of the companies (*o*). And the qualification may be acquired by purchase or redemption, as well as by servitude or birth (*p*). The right to vote, however, depends on registration; and no person may be registered as a freeman and liveryman unless he is on the 15th July (*q*) in the year of registration qualified as such in such manner as would entitle him to vote if such day were the day of election and the Act had never passed (*r*). Also it is necessary that he should have resided (*s*) for six calendar months next previously to the said 15th July within the City or within twenty-five miles of any part thereof (*t*).

Conditions of registration.

No person has this right to vote at any election unless he has been upon the livery for the space of twelve calendar months before such election (*a*); or unless he has paid all livery fees due, or if having paid such fees he has received them back in part or in all, or had any allowance in respect thereof (*b*). Further, no person has the right to vote at any election who has at any time within two years next before such election requested to be, and has accordingly been, discharged from his liability to pay rates or taxes within the City, or has within that time received any alms whatsoever (*c*).

SUB-SECT. 3.—*The Universities.*

Universities.

373. There is only one franchise in England which exists independently of any ownership or occupation of land or of residence in any particular district—that is the franchise possessed by members of the Universities of Oxford, Cambridge, and London.

(i.) *Oxford.*

Oxford.

374. The University of Oxford has by letters patent (*d*) the right to send two members to Parliament, and the right of voting is by ancient usage in the members of convocation (*e*). This is a body consisting of the chancellor, vice-chancellor, doctors of all faculties,

(*n*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 32.
(*o*) *Croucher* v. *Browne* (1846), 2 C. B. 97.
(*p*) *Ibid.* S. 32 of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), contains a proviso that no one elected, made, or admitted a freeman or burgess since 1st March, 1831, otherwise than in respect of birth or servitude, should be entitled to vote at an election for any city or borough. It was held that this proviso does not apply to the City of London (*Croucher* v. *Browne*, *supra*).
(*q*) Date from 31st to 15th July altered by Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 7.
(*r*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 32.
(*s*) For the meaning of "reside," see pp. 164, 177, *ante*.
(*t*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 46.
(*a*) Act for Regulating Elections within the City of London, stat. (1724) 11 Geo. 1, c. 18, s. 14. Hence it appears that he must be two years on the livery before he can be registered.
(*b*) *Ibid.*
(*c*) *Ibid.*
(*d*) 1603 (1 Jac. 1).
(*e*) The powers and privileges of the University are confirmed, save as therein altered, by the Oxford University Act, 1854 (17 & 18 Vict. c. 81), ss. 22, 45.

SECT. 1. In Parliamentary Elections.

and masters of arts whose names are on the books of any college or hall, or of the delegates of unattached students and who have paid all statutable fees (*f*).

(ii.) *Cambridge.*

Cambridge.

375. The University of Cambridge has by letters patent (*g*) the right to send two members to Parliament. The right of voting is by ancient usage in the members of the senate, which is composed of the chancellor, vice-chancellor, doctors of all faculties, bachelors of divinity, and masters of arts, law, surgery, and music having their names on the University register (*h*). Those whose names are removed from the register lose the right of voting, but may recover the right by replacing their names on the register and paying all University dues from the time of removal, 180 days being first allowed to elapse after replacing names (*i*).

(iii.) *London.*

London.

376. The University of London has by statute (*k*) the right to send one member to Parliament. Every man whose name is for the time being on the register of graduates constituting the convocation of the University is, if of full age and not subject to any legal incapacity, entitled to vote in the election of such member (*l*).

SECT. 2.—*In Municipal Elections.*

What elections included.

377. Municipal or local government elections include the election of the councillors of a municipal borough, that of the councillors of a county council, that of the councillors of district and parish councils, and that of the members of the boards of guardians who administer the poor law. The universities also have their own elections for the purposes of their internal government.

SUB-SECT. 1.—*Election of Councillors of a Municipal Borough.*

(i.) *Preliminary.*

What is a burgess.

378. A person is not to be deemed a burgess for the purpose of municipal elections unless he is enrolled as a burgess (*m*)—*i.e.*, unless the revising barrister in whose jurisdiction the matter rests has placed his name upon the burgess list.

(ii.) *Personal Qualifications.*

Conditions of registration.

379. To entitle a person to have his name placed upon the burgess list so as to give him a vote for municipal purposes in municipal corporations it is necessary—as in the case of the parliamentary register—that he should be (1) of full age (*n*), and (2) not subject to any legal incapacity (*o*).

(*f*) See Oxford University Calendar.
(*g*) (1603), 1 Jac. 1.
(*h*) The rights and privileges of the University, save as therein altered, were confirmed by the Cambridge University Act, 1856 (19 & 20 Vict. c. 88), s. 49.
(*i*) See Cambridge University Calendar.
(*k*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 24.
(*l*) *Ibid.*, s. 25.
(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 9 (1).
(*n*) See pp. 139—145, *ante*.
(*o*) This is the short effect of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 9 (3).

SECT. 2. In Municipal Elections.

380. The legal incapacity above referred to is for the most part the same as that set forth in relation to the parliamentary register (*p*), but there are several important differences.

Legal incapacity. Females.

A female is not as such subject to any legal incapacity which prevents her from having a right to vote at a municipal election in a municipal corporation; and in the statute regulating such elections, words importing the masculine gender include females for all purposes connected with and having reference to the right to vote at such elections (*q*). But for the purpose of such elections (*r*), coverture still remains as it always has been at common law a total disqualification (*s*).

Peers.

Peers are not under any legal incapacity which prevents them from having their names placed upon the burgess roll for municipal purposes (*t*).

Aliens.

Aliens are disqualified (*u*).

Parochial relief.

Every person is disqualified who has within the last twelve months preceding the 15th July in any year received union or parochial relief (*w*) or other alms (*x*). But no person is disqualified by reason only that he has received medical or surgical assistance from the trustees of the municipal charities or at the expense of the poor rate (*a*). Medical relief, however, does disqualify the recipient to vote at an election of a board of guardians (*b*).

(*p*) See pp. 139—145, *ante*.

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 63.

(*r*) It is otherwise for the purpose of certain other elections, *e.g.*, those relating to district councils, boards of guardians and parish councils; see pp. 191, 192, *post*.

(*s*) *R.* v. *Harrald* (1872), L. R. 7 Q. B. 361. This case was decided upon the words of the Municipal Corporation (Election) Act, 1869 (32 & 33 Vict. c. 55), s. 9, but the words of the present Act are indistinguishable. In the same case consideration was given as to what the law was when a married woman, who was single at the time when she was placed upon the register, was married at the time of the election. COCKBURN, C.J., said: "She married and accordingly she became subject to all the disabilities that attach to married women. It is said that as long as a man retains his qualification his rights are not to be altered by what happens after the name has been put upon the burgess list. But I much question whether that argument applies to a woman who marries, whose status is at once altered and who becomes at once subject to all the disabilities of coverture. However, it is quite enough to say that there is sufficient doubt as to the validity of this vote also to call for further inquiry." This question is, therefore still open to doubt and may be raised upon an election petition.

(*t*) Because the reasons which prevent them from taking part in the election of members of the House of Commons (see *Beauchamp (Earl)* v. *Madresfield* (1872), L. R. 8 C. P. 245, 250) do not apply to the elections now under consideration.

(*u*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 9 (3) (a). See title ALIENS, Vol. I., p. 301.

(*w*) *Ibid.*, s. 9 (3) (b); see p. 143, *ante*.

(*x*) The word "parochial" applies to "alms" as well as "relief," and therefore the receipt of alms which are not parochial does not disqualify (*R.* v. *Lichfield Corporation* (1842), 2 Q. B. 693).

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 33 (4); Medical Relief (Disqualification Removal) Act, 1885 (48 & 49 Vict. c. 46), s. 2.

(*b*) See p. 192, *post*.

SECT. 2. In Municipal Elections.

Any person disentitled by an Act of Parliament is under a legal disqualification; and this class is the same as that referred to in the case of the parliamentary register as felons and other offenders (*c*).

Persons disentitled by statute.

(iii.) *Property Qualifications.*

Property qualifications.

381. The person whose name it is sought to place upon the burgess roll must also have a certain property qualification—that is, a qualification depending in each case directly or indirectly upon property, and definitely fixed by law, and must have enjoyed such qualification for a certain period also definitely fixed by law.

(a) *The Old Burgess Franchise.*

Conditions required for this franchise.

382. A person may be enrolled as a burgess (*d*) under the heading of the old burgess household franchise, if—

I. He is on the 15th July in the year of registration, and has been during the whole of the then last preceding twelve months (*e*), in occupation (*f*), joint or several (*g*), of some house, warehouse, counting-house, shop, or other building in the borough (*h*)—the

(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 9 (3) (c).

(*d*) But a person *de facto* enrolled is not necessarily "qualified to elect", within the meaning of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 11 (3), so as to make him eligible as a candidate (*Flintham* v. *Roxburgh* (1886), 17 Q. B. D. 44).

(*e*) Where the person on whose behalf the franchise was claimed had transferred the premises which he occupied to a limited company, and on the same day took from that company a demise of part of the premises which he continued to occupy, it was held that there had been no break in his occupation (*Timmis* v. *Albiston*, [1895] 2 Q. B. 58).

(*f*) This occupation may be one to which the person on whose behalf the franchise is claimed is entitled by a verbal understanding (*Unwin* v. *McMullen*, [1891] 1 Q. B. 694, C. A.).

(*g*) Compare *Dipstale's Case* (1868), L. R. 4 Q. B. 114, which decided that the occupation under the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 9, might be joint or several. The words of the present Act are express.

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 9 (2) (b). It is to be noted that by s. 31 (a) of the same Act the term "house, warehouse, counting-house, shop, or other building" include any part of a house where that part is separately occupied for the purpose of any trade, business, or profession; and any such part may for the purpose of describing the qualification be described as offices, chambers, studio, or by any like term applicable to the case. And by s. 31 (b): "Where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part." This section was discussed by the Divisional Court in *Greenway* v. *Bachelor* (1883), 12 Q. B. D. 381, where it was held that occupation of part of a dwelling-house for the purposes of a private dwelling only constitutes occupation of a house for this purpose. It is not necessary that there should be separate occupation for the purpose of some trade, business, or profession. In that case Lord COLERIDGE, C.J., said at p. 383: "To my mind s. 31 (b) puts the matter beyond reasonable doubt, and deals with the municipal franchise by placing it in an exactly similar position to the parliamentary franchise It is as though the legislature had said that whereas judicial decisions had established the position with respect to the parliamentary franchise of the occupier of part of a dwelling-house, the principle of those decisions should extend also to the municipal franchise."

words "or other building" having to be interpreted according to the rule of *ejusdem generis* (*i*).

Practically identical words to those used in the section under consideration were used in the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 27, where the words were "any house, warehouse, or counting-house, shop, or other building." Since the assimilation of the borough to the county franchise the cases under the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), are of no importance in relation to the parliamentary vote, but they remain important as to the municipal vote.

It was held under s. 27 of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), that a building calculated to be used as a dwelling-house was properly described as a house although it was not dwelt in by anyone (*Daniel* v. *Coulsting* (1845), 7 Man. & G. 122). And within the same section it was also held that a building, the lower part of which is used as a cowhouse and stable and the upper part consisting of a chamber used as a dwelling-place, was properly described as a house (*Nunn* v. *Denton* (1844), 7 Man. & G. 66). "People usually dwell in a house," said TINDAL, C.J., "by sleeping there at night." Again under the same section it was decided that to entitle an occupier to a borough vote in respect of a "counting-house" it need not consist of an entire building or be structurally severed from the rest of the house of which it forms a part (*Piercy* v. *Maclean* (1870), L. R. 5 C. P. 252). Where the claimant occupied as a counting-house a room in a house, the landlord of which also had a counting-house there, but did not reside there—there being an outer door which was locked at night, of which the claimant had no key; nor was there any key-hole upon the outside—it was held under the same section that the claimant was duly qualified (*Downing* v. *Luckett* (1847), 5 C. B. 40). Occupation of an attorney's office entitled a person to be a burgess within the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 9, which required occupation of a house, warehouse, or shop. This Act did not contain the words "or other building."

Stall-holders in a market have been held in Ireland not to be occupiers of houses or shops (*Lovell* v. *Callaghan*, [1894] 2 I. R. 346); but in London it would appear from *Pickard* v. *Preston*, (1902) 1 Smith, Reg. Cas. 296 (decided on another point), that such a qualification is considered sufficient in the case of the London Central Meat Market. The occupying of "part of a house" without any actual severance from the residue was held in *Cook* v. *Humber* (1861), 11 C. B. (N. S.) 33, not to confer a qualification under s. 27 of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), *non obstante* the *dictum* in *Toms* v. *Luckett* (1847), 5 C. B. 23; 2 Lut. Reg. Cas. 19. The occupation of offices without any actual severance from the residue of the premises was held to be similarly insufficient for the purposes of the section (*Wilson* v. *Roberts* (1861), 11 C. B. (N. S.) 50). The occupation of part of a house had, however, been held to qualify under the section where there was independent occupation and actual severance from the rest of the house (*Henrette* v. *Booth* (1863), 15 C. B. (N. S.) 500); but as to all such cases see now the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 31, *supra*. In a rating case the Court of Appeal held that where a house not structurally severed was let partly to one tenant and partly to another, and each had the exclusive occupation of the part let to him, the tenants were not "joint occupiers" but that each was the occupier of a separate tenement capable of being rated separately (*Allchurch* v. *Hendon Union* (*Assessment Committee and Guardians*), [1891] 2 Q. B. 436, C. A.).

(*i*) These general words, "or other building," were also used in the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 27, and gave rise to much difficulty. In *Genge's Case* (1842), Bar. & Aust. 486, a parliamentary committee decided that a limekiln was a building although open to the sky, it having been pointed out that on any other interpretation such a substantial building as the Coliseum itself would have been excluded. Where rooms in a factory were let to cotton-spinners separately—the rents varying according to the size of the room—and the approach to the rooms was either by a common staircase leading from the entrance to the factory (to which there was a door which was never

SECT. 2. In Municipal Elections.

fastened) or by separate outside staircases or by doors opening into the yard, and each tenant had his own spinning machine worked by steam-power supplied by the landlord, and also the key of his room and exclusive control thereof, it was held that the occupier of each room was the exclusive occupier of a building within section 27 of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45) (*Wright* v. *Stockport* (*Town Clerk*) (1843), 5 Man. & G. 33). A cowhouse or stable was held to be a building within the same section, the occupation of which was sufficient to confer the franchise (*Whitmore* v. *Bedford* (1843), 5 Man. & G. 9). MAULE, J., in that case said: "The term building is not to be taken in its largest acceptation; it must be explained by the accompanying words. A wall inclosing a space of ground might be a building worth £10 a year, but it would give no qualification. It is contended that the buildings specified in the Act are such as are generally used for trade, but it does not follow that the Act is limited to buildings erected solely for that purpose. The building under consideration might become a warehouse if goods were stored in it, or it might be a shop if they were sold there. I have no doubt whatever that this building is sufficient". Where a stable and coachhouse adjoined each other and were both under one roof—there being two grated windows in the wall that separated the two, but no other internal communication between them—it was held that the two constituted one building for the purpose of the same section (*Jolliffe* v. *Rice* (1848), 6 C. B. 1). A "building" may consist of several unconnected parts, if such parts are occupied as one whole (*Pownall* v. *Dawson* (1851), 11 C. B. 9). Where the voter occupied at a rent exceeding £10 per annum a piece of land with a stone building upon it, which had a roof, four walls, and a door, and was used by the tenant for keeping guano and other manures which he used upon the land, he was entitled to a vote (*Morish* v. *Harris* (1866), L. R. 1 C. P. 155. ERLE, C.J., in that case said at p. 160: "It was suggested on the argument that the revising barrister decided against the qualification because the guano was to be applied to the claimant's own farm, and the building was used solely for an agricultural purpose, and that in thus deciding he intended to follow an opinion of this court supposed to have been expressed in *Powell* v. *Boraston* (1865), 18 C. B. (N. S.) 175. In that case we held that a few boards nailed to some posts for the sole purpose of pretending to the revising barrister that it was a shed did not qualify and we dissented from the opinion expressed in the note to *Watson* v. *Cotton* (1847), 2 Lut. Reg. Cas. 53, 58, n., 'that any building, however slight and unsubstantial, would be sufficient to qualify provided it had a roof and was capable of holding any articles.'" The court thought this case distinguishable. KEATING, J., in *Morish* v. *Harris*, *supra*, also said: "The statute describing the qualification for a borough vote, according to our construction, requires amongst other things that there should be a building having some permanence, some utility, and some real value, but does not define either the form or materials essential for permanence or the kind of utility intended; nor does it specify the proportion which the value of the building should bear to the value of the land when the amount of £10 is made up partly by building and partly by land. . . . It appears that the buildings in question are of a permanent nature, that they are useful for the occupation of the land upon which they are placed and *bonâ fide* add to its real annual value to let, though in a small degree. . . . We feel ourselves therefore constrained to hold that the qualification in each of these cases was sufficient. . . . In pronouncing this decision, we do not intend to interfere with the discretion of revising barristers in deciding whether a building by means of which it is sought to qualify fulfils the requirements which we think the statute imposes: viz., permanence, utility and contribution to the beneficial occupation of the land, thereby increasing its real annual value to let; nor do we mean to lay down as a rule that all buildings of the present value as returned by the revising barrister necessarily give a qualification unless that value be *bonâ fide* combined with permanence and utility, and thereby add to the real annual value of the whole to let." Where the revising barrister found a certain erection to be a building within s. 27, and gave a description of it which did not necessarily show that it could not be a building, the court did not interfere with his decision. It appears to have been a question of degree. "Its being more or less substantial," said MAULE, J., "cannot affect the question." Namely, it cannot affect the question on appeal (*Watson* v. *Cotton* (1847), 5 C. B. 51, 55). A "building" must be capable of use for some purpose of residence or business (*Duncan* v. *Jackson* (1906), 8 F. 323).

II. He has during the whole of those twelve months (*j*) resided in the borough or within seven miles thereof (*k*)—a distance which may be measured in a straight line on a horizontal plane, and which may be determined by the Ordnance Survey map (*l*). He will not be taken to have failed in either of these first two conditions by reason only that during a part of the qualifying period, not exceeding four months in the whole, he has by letting or otherwise permitted such house to be occupied as a furnished dwelling-house by some other person, and during such occupation by another person has not resided in or within seven miles of the borough (*m*).

III. He has been rated in respect of the qualifying property to all poor rates made during those twelve months for the parish wherein the property is situate (*n*). If the owner is rated this will be a sufficient performance of this condition (*o*).

IV. He has, on or before the 20th of the same July, paid all such rates, including borough rates (if any), as have become payable by him in respect of the qualifying property up to the then last preceding 5th of January (*p*). If the owner has paid the rates this will be a sufficient performance of this condition (*q*).

Claim to be rated.

383. In relation to these last two requirements it is expressly provided by statute that if an occupier of any qualifying property, whether the landlord is or is not liable to be rated to the poor rate in respect thereof, claims to be rated to the poor rate in respect thereof, and pays or tenders to the overseers of the parish where the property is situate the full amount of the poor rate last made in respect of the property, the overseers must put the occupier's name on the rate-book in respect of that rate. If they fail to do so he will nevertheless for the purposes of admission to the burgess roll be "deemed" rated to that rate (*r*).

Qualification by succession.

384. When a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, then, for the purpose of qualification, the occupancy of the

(*j*) Temporary absence with a *bonâ fide* intention and right to return does not prevent a qualification being obtained (*Stanford* v. *Williams* (1899), 80 L. T. 490; compare *Bond* v. *St. George's, Hanover Square, Overseers* (1870), L. R. 6 C. P. 312).

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 9 (2) (c).

(*l*) *Ibid.*, s. 231.

(*m*) Municipal Voters Relief Act, 1885 (48 & 49 Vict. c. 9), s. 2.

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 9 (2) (d).

(*o*) See Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 19, and Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 14.

(*p*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 9 (2) (e).

(*q*) *Marsh* v. *Estcourt* (1889), 24 Q. B. D. 147; see next note.

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 32. But payment of the rates by the occupier is not necessary. The section, however, still has a sphere of operation. If the name of the tenant does not appear in the rate book as occupier, the result to the tenant may in some cases be disfranchisement. This section comes to his rescue and enables him, if his landlord is not rated or has not paid the rates himself, to pay or tender the amount due to the overseers and so to entitle himself to have his name entered on the rate-book as occupier (*Marsh* v. *Estcourt* (1889), 24 Q. B. D. 147).

SECT. 2. In Municipal Elections.

property by a predecessor in title, and the rating of the predecessor in respect thereof, is equivalent to the occupancy and rating of the successor; and rating in the name of the predecessor will, until a new rate is made after the date of the succession, be equivalent to rating in the name of the successor, and the successor is not to be required to prove his own residence, occupancy, or rating before the succession (*s*).

The qualifying property need not be throughout the twelve months constituting the period of qualification the same property or in the same parish (*t*).

Rate payable by instalments.

385. Where by law a borough rate is payable by instalments payment by any person of any such instalment will, as regards his qualification to be enrolled as a burgess, be deemed a payment of the borough rate in respect of the period to which the instalment applies (*a*).

Oxford and Cambridge.

386. A person is not entitled to be enrolled as a citizen or burgess of the city of Oxford or burgess of the borough of Cambridge by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of those universities (*b*).

(b) *The Ten Pounds Occupation Franchise.*

Conditions required for this franchise.

387. Every person of full age who is not subject to any legal incapacity in the sense above explained (*c*) is qualified to be enrolled as a burgess under the heading of the £10 occupation franchise, if—

I. During the whole twelve months immediately preceding the 15th day of July he has been an occupier as owner or actual (*d*) tenant of some land or tenement in a parish or township to the clear yearly value of not less than £10.

II. He has resided in or within seven miles of the parish during six months immediately preceding the 15th day of July.

III. He or someone else during the said twelve months has been rated to all poor rates made in respect of such land or tenement.

IV. All sums due in respect of the said land or tenement on account of any poor rate made and allowed during the twelve months immediately preceding the 5th day of January next before the registration, or on account of any assessed taxes due before the

(*s*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 33 (1). But the appointment of a Wesleyan minister to a new circuit does not necessarily give him a franchise in respect of his manse—the exact terms of the trust deed must be looked at for the purpose of seeing whether such a minister falls within the words of the section (*Williams* v. *Blakeway* (1902), 51 W. R. 127, where *Foster* v. *Mulhall* (1859), 10 I. C. L. R. 532, Ex. Ch., was discussed and explained).

(*t*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 33 (2).

(*a*) *Ibid.*, s. 33 (3).

(*b*) *Ibid.*, s. 257 (3).

(*c*) See p. 183, *ante*.

(*d*) There is no "deeming" of servants etc. to be owners or tenants when they are not so far as the municipal franchise is concerned. See pp. 189 *et seq.*, *post*.

said 5th day of January, have been paid on or before the 20th day of July (*e*).

The special provision as to Oxford and Cambridge set out in relation to the old burgess household franchise applies equally to the £10 occupation franchise (*f*).

If two or more persons jointly are such occupiers as above mentioned, and the value of the property is such as to give £10 or more for each occupier, each of such occupiers is entitled to be registered (*g*).

If a person has occupied in the borough different properties of sufficient value in immediate succession during the twelve months, he is entitled to be registered in respect of such occupation in the parish in which the property last occupied is situated (*h*).

(c) *Franchises which do not obtain in Municipal Boroughs.*

No service franchise.

388. The "service franchise" (*i*) forms no part of the municipal franchise (*k*), as the statute by which the persons enjoying the service franchise are "deemed" to be occupiers as tenants when they are not actually such is confined to the case of the parliamentary franchise (*l*). The revising barrister, in whose jurisdiction the matter rests, will therefore have to consider in each case on the facts whether the person on whose behalf the franchise is claimed is actually an owner or tenant, and for this purpose he must consider the real substance of any agreement which there may be between the parties (*m*).

No lodger franchise or reserved rights.

The lodger franchise forms no part of the municipal franchise (*n*), nor do the rights reserved to freemen extend to the municipal franchise (*o*). The result is that to be enrolled as a burgess a person must be an "occupier" as this word has been explained above, and that nothing except such occupation will suffice (*p*).

Application of law.

389. The law as above set out applies, outside the metropolis, to every city, town, district, or place the inhabitants whereof are

(*e*) County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 3, and schedule. This Act in spite of its title affects the franchise in municipal boroughs.

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 257 (3).

(*g*) County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 3, and schedule.

(*h*) *Ibid.*

(*i*) See pp. 174—174, *ante.*

(*k*) *M'Clean* v. *Prichard* (1887), 20 Q. B. D. 285.

(*l*) Sect. 3 of the Representation of the People Act, 1884 (48 & 49 Vict. c. 3), is the section which confers the "service franchise," and since it does not qualify the persons to whom it relates for the municipal franchise, these persons must be placed in division II., which is the division of occupiers appropriate to those who are entitled to parliamentary but not to municipal votes. See p. 203, *post.*

(*m*) *Kent* v. *Fraser* (1897), 13 T. L. R. 417.

(*n*) See pp. 168, 174, *ante.*

(*o*) See the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 9, 209 (1). Neither of these sections gives him a municipal vote, nor does s. 205 nor section 2 of the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), therein referred to.

(*p*) This follows from the above and from the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 9, and the County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 3. See p. 161, *ante.*

SECT. 2. In Municipal Elections.

duly incorporated under the Municipal Corporations Act, but to no other place (*q*).

(d) *In the Metropolis.*

City corporations.

390. In the London metropolitan boroughs the franchise is the same as in the case of the franchise for the election of councillors of parish and district councils (*r*).

In the case of the corporation of the City of London (*s*) the electors of the persons who are elected in Common Hall (*t*) are the freemen of the City and the liverymen of the livery companies (*u*).

The electors of the persons who are elected in wardmotes (*v*) are the freemen occupiers (*a*), and the persons enjoying the £10 occupation franchise (*b*) and the household franchise (*c*). In the case of these last-named electors residence is not required in the electors of the wardmotes (*d*).

SUB-SECT. 2.—*Election of the Councillors of a County Council.*

Who entitled to vote.

391. The persons entitled to vote at an election of the councillors of a county council are, generally speaking, the persons who are placed for that purpose by the revising barrister within whose jurisdiction the matter rests (*e*) upon the local government register of electors (*f*).

In a municipal borough the burgesses enrolled according to the provisions above set forth relating to their franchise are the persons entitled to vote at an election of county councillors (*g*), and inasmuch as no person is entitled to be enrolled as a burgess who has not the qualifications of a burgess (*h*), this curious result

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 6. By this section "This Act shall extend to every city and town to which the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), applies at the commencement of the Act, and to any city, town, district or place whereof the inhabitants are incorporated after the commencement of this Act, and whereto the provisions of the Municipal Corporations Acts are under this Act extended by charter, and to no other place." The effect of this is as stated in the text.

(*r*) London Government Act, 1899 (62 & 63 Vict. c. 14), ss. 2 (5), 34; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 31; see p. 191, *post.*

(*s*) The City of London does not come under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50); see s. 6.

(*t*) Including the election of the two aldermen who must be "of the most sufficient and wisest citizens," from whom the Lord Mayor is chosen (see Pulling, Laws, Customs, Usages, and Regulations of the City of London, ed. 1842, p. 15), and including sheriffs, bridge-masters, auditors of the City and bridge-house accounts, chamberlain's, and the four "ale-connors" (*ibid.*, p. 83).

(*u*) See p. 181, *ante.*

(*v*) Including aldermen, common councillors and ward officers. See the City of London Municipal Elections Act, 1849 (12 & 13 Vict. c. xciv.), and the City of London Municipal Elections Amendment Act, 1867 (30 Vict. c. i.).

(*a*) City of London Elections Act, 1849 (12 & 13 Vict. c. xciv.), s. 2.

(*b*) City of London Municipal Elections Amendment Act, 1867 (30 Vict. c. i.), s. 2.

(*c*) *Ibid.*, s. 3.

(*d*) *Ibid.*, s. 4.

(*e*) See pp. 217—241, *post.*

(*f*) See pp. 244—248, *post.*

(*g*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (4).

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 9.

follows—that there are instances of persons who if they did not reside in a municipal borough would be entitled to vote on an election of county councillors, but who are not so entitled if they do reside during any part of the qualifying period within such borough (*i*). SECT. 2. In Municipal Elections.

The personal qualifications are the same as in the case of the franchise for the election of councillors of a municipal borough (*k*), and outside the metropolis the property qualifications are, except as appears above, the same as in the case of the franchise for the election of councillors of a municipal borough (*l*). Personal qualifications. Property qualifications.

392. In the administrative county of London the franchise is the same as in the case of the franchise for the election of councillors of parish and district councils. The London County Council is thus elected upon a wider franchise than other county councils (*m*). London County Council.

SUB-SECT. 3.—*Election of the Councillors of Parish and District Councils.*

393. The electors of parish and district councillors are the same and are shortly described as "parochial electors" (*n*). The law as to personal qualifications is the same as in the case of the franchise for the election of the councillors of a municipal borough, except that coverture is not a disqualification for the parochial franchise (*o*). Who entitled to vote. Personal qualifications.

394. The local government register of electors and the parliamentary register of electors, so far as they relate to a parish, together form the register of the parochial electors of the parish (*p*). Any person whose name is not in that register is not entitled to attend a meeting or vote as a parochial elector (*q*). Any person whose name is in that register is entitled to attend a meeting Property qualifications.

(*i*) *E.g.*, a person who comes to or from the borough within the qualifying period from or to a place within the county more than seven miles from the borough has no county council vote (*ibid.*), whereas a person who is not a burgess during any part of the qualifying period may have come to or from any place within the county within the qualifying period from or to any other place in the county (Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 26; County Electors Act, 1888 (51 & 52 Vict. c. 10)). Division III. is accordingly not printed sometimes in the case of a municipal borough—the burgess list taking its place—but there may possibly be a question as to whether strictly it should not be printed for the purpose of including asterisks which appear to be retained for the purpose of the election of boards of guardians, who are elected by the parochial vote (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 20 (3)).

(*k*) See pp. 182—184, *ante*.

(*l*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 2 (4).

(*m*) *Ibid.*, and London County Council Electors Qualification Act, 1900 (63 & 64 Vict. c. 29), s. 2.

(*n*) Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 2, 3, 23.

(*o*) *Ibid.*, s. 43. The section is as follows: "For the purposes of this Act a woman shall not be disqualified by marriage for being on any local government register of electors, or for being an elector of any local authority, provided that a husband and wife shall not both be qualified in respect of the same property." No woman, however, whether married or single, can be qualified by reason of ownership of property even for a parochial franchise. This was held by the Court of Appeal in *Drax* v. *Ffooks*, [1896] 1 Q. B. 238, C. A. See p. 192, *post*.

(*p*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 44 (1).

(*q*) *Ibid.*

SECT. 2. In Municipal Elections.

and vote as a parochial elector, unless prohibited by Act of Parliament (*r*).

The effect of this is that any qualification which gives a parliamentary franchise gives also a parochial franchise, and any qualification which gives a franchise for the election of borough councillors or of county councillors equally gives a parochial franchise (*s*). But a person who is disqualified for the parliamentary ownership franchise cannot claim any franchise in respect of ownership—there being no other ownership franchise than the parliamentary. Thus, a married woman is precluded by reason of not being qualified to be on the parliamentary register from getting on to the parochial electors' list by that avenue (*t*).

Division of district councils.

395. District councils are divided into "urban" and "rural" district councils (*u*); but the expression "parochial elector," when used with reference to a parish in an urban district or in the county of London or any county borough, means any person who would be a parochial elector of the parish if it were a rural parish (*v*).

SUB-SECT. 4.—*Election of the Members of a Board of Guardians.*

Who entitled to vote.

396. The members of boards of guardians are elected by "parochial electors" as this expression is above explained; and there are no further or special conditions required for the purpose of this franchise in regard to property qualifications. In regard, however, to personal qualifications there is one, but only one, difference between the conditions required for the franchise for the election of poor law guardians and those required for the other local government franchises. The difference is that the exception established by statute for medical relief does not apply to the present franchise (*w*).

The parochial electors of each parish are the electors of the guardians for that parish, and if the parish is divided into wards the electors of the guardians for each ward are such of the parochial electors as are registered in respect of qualifications within the ward (*x*).

SUB-SECT. 5.—*Elections in the Universities.*

Special method of election.

397. The universities, like other private societies, have their own method of arranging for the election of officers, other than

(*r*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 44 (1).
(*s*) *Ibid.*
(*t*) *Drax* v. *Ffooks*, [1896] 1 Q. B. 238, 243, C. A. The words "by that avenue" are taken from the judgment of RIGBY, L.J., and are illuminating as showing the principle upon which the section will be interpreted.
(*u*) See generally title LOCAL GOVERNMENT.
(*v*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 75 (2).
(*w*) Medical Relief (Disqualification Removal) Act, 1885 (48 & 49 Vict. c. 46), s. 2. *Aliter* as to vaccination; see the Vaccination Act of 1867 (30 & 31 Vict. c. 84), s. 26. No registration machinery appears to have been provided for carrying out this distinction. The vote of a person coming within s. 2 of the Act of 1885 given in an election of boards of guardians could, however, be struck off upon petition.
(*x*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 20 (3).

members to represent them in Parliament, and this includes the franchise of those who are to make the election (*y*).

SECT. 2. In Municipal Elections.

Part III.—Registration, and Revision of Lists of Voters.

SECT. 1.—*Preparation of the Lists* (*a*).

SUB-SECT. 1.—*In General.*

398. Although a person may possess the necessary personal and property qualifications he will not be entitled to record his vote at an election unless his name appears in one or other of the lists of electors which are prepared, revised, and published each year as a

Necessity for registration.

(*y*) Thus, in the case of Oxford University, the chancellor, high steward, vice-chancellor, proctors, masters of the schools, masters of the streets, clerks of the market, keeper of the archives etc., together with the registrar and other ministers and servants of the University, are elected by the members of convocation (Laud's, Stat. tit. xvii.). Convocation consists of the chancellor or vice-chancellor and both the proctors or their deputies, all the doctors in divinity, medicine, and civil law who are necessary regents, and the masters during their first year of regency, all the heads of colleges and halls and their deputies, all the members of the foundation of any college, who have ever been regents in civil laws or arts, all the doctors in divinity, medicine or civil law who are housekeepers within the precincts of the University, all the professors and public lecturers who have ever been regents in civil law or arts, provided only they have personally or by some other made good in their turns the exercises prescribed by the statutes, and have paid the fees due to the University and its officers, and lastly, all commoners who have ever been regents in civil law or arts, provided they have had their names upon the buttery book of some college or hall from the time of taking the degree, either of master of arts, or doctor in some one of the faculties above mentioned and have taken their turns in preaching and disputing and paid the fees due to the University and its officers (*ibid.*, tit. xi.). The elected members of the Hebdomadal Council of the University of Oxford are to be elected by the Congregation of the University. See Oxford University Act, 1854 (17 & 18 Vict. c. 81), s. 6. The Congregation is the body defined by s. 16 of the same Act.

The other universities have similarly each their own rules as to franchise. See, *e.g.*, Cambridge University Act, 1856 (19 & 20 Vict. c. 88).

(*a*) The Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1 (1), enacts that subject to certain modifications the registration of occupation voters in parliamentary counties shall be conducted in like manner as the registration of occupation voters in parliamentary boroughs. The same Act, by s. 1 (3), provides that s. 9 of the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26) (which relates to the publication of notices at post offices etc.), shall apply only to parishes wholly or partly in an urban sanitary district; and that s. 16 of that Act (except so far as relates to the registration of lodgers) and s. 21 (arrangement of lists according to streets) shall not apply to counties. By s. 1 (2) of the Registration Act, 1885 (48 & 49 Vict. c. 15), sections 9, 27 (objections), 28 (duties and powers of revising barristers), and 29 (power to fine overseers) are applied to the registration of ownership voters in counties. The Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 15, and the Registration Act, 1885 (48 & 49 Vict. c. 15), s. 6 (2), provide for the joint revision of parliamentary and burgess lists in boroughs, while the County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4, provides that the lists of burgesses, county electors, and occupation voters for parliamentary elections shall, so far as practicable, be made out and revised together.

SECT. 1. **Preparation of the Lists.**

register or burgess list for the following year (*b*). The duty of preparing these lists is imposed upon the overseers of the poor (*c*). This term extends in matters connected with registration to all persons who by virtue of any office or appointment execute the duties of overseers by whatever name they may be called or however they may be appointed (*d*).

The overseers to prepare lists.

Registration officers.

In certain cases a registration officer may be appointed to perform all the duties of overseers of the parish or parishes for which he acts in respect of the registration of voters (*e*).

The law relating to this matter is substantially the same in the case of counties (*f*) and boroughs, but there are some respects in which it differs.

(*b*) A person entitled to the occupation franchise ought, if the overseers can ascertain the facts, to be placed upon the register without any effort on his own part. A person entitled to the ownership franchise must claim in the first instance, but once on the register remains there, unless objected to by overseers or otherwise. A person entitled to the lodger franchise has no right to be registered unless he has duly claimed; see p. 207, *post.*

(*c*) The duties may be lawfully carried out by the majority of the overseers (Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 79; Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 101; Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 238). As to overseers' liability to fines, see p. 532, *post.*

(*d*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 101. It seems that a collector of poor rates accustomed to perform the ordinary duties of overseers, including those of registration, is an overseer within this section (*Green* v. *Mepham* (1878), 2 Hop. & Colt. 458). In *Points* v. *Attwood* (1848), 6 C. B. 38, an assistant overseer appointed in general terms under the Poor Relief Act, 1819 (59 Geo. 3, c. 12), s. 7, was held an overseer within the section; compare *Caunter* v. *Addams* (1863), 15 C. B. (N. S.) 512. See also Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 7 (1); Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 4; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 19. It is assumed that the definition applies throughout the Registration Acts. As to overseers, see title POOR LAW.

(*e*) The guardians of a union not wholly comprised in an urban district may, with the consent of the overseers of any parish or parishes within their union for which an assistant overseer has not been appointed, annually appoint a fit person to act as registration officer for such parish or parishes. He is removable and his remuneration is to be fixed and paid by the guardians and charged on the poor rates of the parish, and if he acts for more than one parish, in proportion to the number of persons on the register (County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4 (2) (h)). By s. 22 of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), every precinct or place, whether extra-parochial or otherwise, which has no overseers shall for the purpose of making any claims and making out any list directed by the Act be deemed to be within the parish or township adjoining thereto and sharing in the right of election to which such claim or list may relate; and if such parish or place adjoins two or more parishes or townships situated as aforesaid it shall be deemed to be within the least populous according to the last census.

(*f*) "County," for parliamentary purposes, means any county, riding, parts, or division of a county returning a member or members to serve in Parliament (Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 61; Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 11; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 19). By the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 100, "county" does not include a county of a city or a county of a town. "Entire county" means, in the case of a county divided into administrative counties, the whole of the county formed by those administrative counties. "Administrative county" means the area for which a county council is elected but does not (except where expressly mentioned) include a county borough. See also title LOCAL GOVERNMENT.

Precepts.

399. The duties of the overseers in regard to registration are regulated by instructions known as precepts, which are annually sent to them under statutory authority (*g*), together with the necessary notices and forms. These precepts, notices, and forms, may be altered from time to time by Order in Council, and have the effect of law (*h*).

Who must send out precepts.

400. The officers intrusted with the duty of sending the precepts to the overseers are, with certain exceptions (*i*), the clerk of the county council in the case of counties, and the town clerk in the case of boroughs (*k*). Should there be no town clerk the duties fall on the returning officer of the city or borough or on such person as he may appoint for the purpose (*l*). In the City of London the Secondaries perform the duties (*m*).

Time for sending.

401. The clerk of the county council in every county and the town clerk in every borough must cause a sufficient number of precepts, notices, and lists to be printed, and must send them on or within seven days before the 15th April (*n*) to the overseers of every parish respectively in the county or the borough (*o*). In the case of counties, copies of such part of the register then in force as relates to each parish must accompany the precept (*p*).

(*g*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 7.

(*h*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 76 (7). The last Registration Order was dated 11th February, 1907, but the Registration Order, 1895, is that substantially in force.

(*i*) The town clerk of the borough of Newport is deemed clerk of the peace for the parliamentary county of the Isle of Wight (Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 79; Registration Act, 1843 (6 & 7 Vict. c. 18), s. 101; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 7 (2)). Where on 16th May, 1888, any clerk of the peace acted in that capacity under the Registration Acts he is to continue so to act as deputy of the clerk of the county council (County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 14 (b)).

(*k*) Originally the clerk of the peace fulfilled the duties. The clerk of the county council is now substituted (County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 14). In registration matters he is to act under the direction of the county council (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 83 (6)). Where a county is divided into quarter sessional areas, the clerk of the peace of each area is deemed to be clerk of the peace of the county for the parishes within his area until the lists have been revised (Registration Act, 1885 (48 & 49 Vict. c. 15), s. 7 (3) ; County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 14 (a)).

(*l*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 101. Where a municipal borough forms part of a parliamentary borough, the town clerk of the municipal borough is deemed to be the town clerk within the Registration Acts (Parliamentary Electors Registration Act, 1868 (31 & 32 Vict. c. 58), s. 18).

(*m*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 56. As to the office of Secondary, see title METROPOLIS. In practice, only one Secondary is now appointed, although the statutes provide for two.

(*n*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 7.

(*o*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 3, 10. The words of s. 10 relating to boroughs are "every parish or township situate wholly or in part within such city or borough." Besides precepts, notices etc., the town clerk must send a table of payments as in Sched. D (1) of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18).

(*p*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 3 County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 3.

SECT. 1.

Preparation of the Lists.

List of disfranchised persons.

402. In addition, the clerk of the county council or the town clerk (*q*), as the case may be, must annually make out a list containing the names and descriptions of all persons who, though otherwise qualified to vote at elections, are incapable of voting on account of having been found guilty of a corrupt or illegal practice on conviction or by the report of any election court or election commissioners (*r*). The list must state the offence of which each person has been found guilty (*s*). The list must be sent to the overseers, who must publish it with the list of voters (*t*).

SUB-SECT. 3.—*Preliminary Inquiries and Notices by Overseers.*

Inquiry as to inhabitant occupiers.

403. The overseers must annually, in the months of April or May, inquire or ascertain with respect to every dwelling-house within the parish whether anyone other than the person rated or liable to be rated for it is entitled to be registered as a voter by virtue of being an inhabitant occupier (*a*) of any such dwelling-house. They must enter in a separate column of the rate-book the name of everyone so entitled, and the situation and description of the dwelling-house which qualifies him (*b*).

For the purpose of such inquiry the overseers may serve on the occupier, or on the person rated or liable to be rated for the dwelling-house, or on some agent of such person concerned in its management,

(*q*) "Registration officer," the term used in s. 39 (1) of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 64, is thus defined.

(*r*) Under the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), or under any other Act for the time being in force relating to a parliamentary election or an election to any public office, see pp. 518, 519, *post*. This would not appear to include disfranchisement by the judgment of the court under s. 2 of the Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69).

(*s*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 39 (1); Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 24; County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4. The officer must examine the report of any election court or commissioners who have inquired into an election held in his county or borough.

(*t*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 39 (1); Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 24; County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4. The overseers must also in the case of every person in the corrupt practices list omit his name from the list of persons entitled to vote or, as circumstances require, add "objected" before his name, in the list of claimants or copy of the register published by them in like manner as is required by law in any other cases of disqualification (Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 39 (3)).

(*a*) The notes at the foot of the prescribed forms point out that the head of the family alone is considered to be the occupier (Registration Order, 1895, Scheds. II. and III., Form A, n. (d), Statutory Rules and Orders Revised, Vol. IX., Parliamentary Election, England).

(*b*) Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 9 (2). As to meanings of the term "dwelling-house," see p. 163, *ante*. These inquiries are only directed in terms to be made as to dwelling-houses, but as the occupation lists will have eventually to include all persons entitled in respect of a £50 rental, or a £10 occupation (see Precept, Counties, para. 37, Boroughs, para. 35, and Form D, No. 1), it will be necessary in practice to make inquiries as to these persons also at the same time.

a requisition in the prescribed form (*c*), requiring that the form in the notice be accurately filled up, giving the names of the inhabitant occupiers, and returned to the overseers within twenty-one days after service (*d*). Special instructions are given in the form for returning the names of persons entitled to the service franchise (*e*).

Notice as to payment of rates.

404. On or before the 20th June in every year, the overseers must publish a notice in writing in the prescribed form (*f*), stating that no person will be entitled to have his or her name inserted in any list of voters, parliamentary or municipal, for the county or borough for the current year, in respect of the occupation of premises in the parish, unless he or she pay, on or before the next 20th July, all rates and assessed taxes (*g*) which have become payable in respect of the premises during the twelve months next before the then last 5th January (*h*).

Notice to occupiers.

Where in fact any poor rate due on the 5th January from any occupier for premises capable of conferring the franchise remains unpaid on the following 1st June, the overseers, whose duty it is to collect the rate, must on or before the 20th of the same month, unless the rate has previously been paid or has been duly demanded by a demand note (*i*), give or cause to be given a notice (*k*) to the occupier. This provision applies although the owners of the premises have become liable for the rates (*l*).

List of persons in default.

The overseers must, on or before the 22nd July, make out a list with the names and addresses of all those who have not paid, before the 20th of that month, all rates payable for premises within

(*c*) Specified in Registration Order, 1895, Sched. II., Form A; Sched. III., Form A, as amended by the Registration Order, 1907.

(*d*) Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 9 (3). The notice may be served in the following manner: It is deemed to be duly given if delivered to the occupier or left at his last or usual place of abode or with some person on the rateable premises. In the case of a body of persons, corporate or unincorporate, it is to be served on the secretary or agent, and where the dwelling-house, by reason of belonging to the Crown or otherwise, is not rated, it is to be served on the chief local officer having the superintendence or control of the house (*ibid.*, s. 9 (4)).

(*e*) See Registration Order, 1895, Scheds. II. and III., instructions at foot of Form A, and see n. (6). Special instructions are also given (*ibid.*) for the case of a house let in separate tenements.

(*f*) Registration Order, 1895, Sched. II., Form B; Sched. III., Form B.

(*g*) *I.e.*, Inhabited house duty, payable under House Tax Act, 1851 (14 & 15 Vict. c. 36).

(*h*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 11, applied to counties by Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1.

(*i*) Served in the same manner as the notice mentioned in the text (Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 28).

(*k*) Registration Order, 1895, Sched. II., Form C; Sched. III., Form C. The notice is deemed to be duly given if delivered to the occupier or left at his last or usual place of abode or with some person on the rateable premises (Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 28, extended to municipal voters in boroughs, parliamentary and municipal; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 10, extended to counties; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1, extended to burgesses and county electors; County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4).

(*l*) Under the provisions of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 10. For the effect of non-payment of rates, see p. 156, *ante*.

SECT. 1. Preparation of the Lists.

the parish before the last 5th January. The list is to be open to public inspection (*m*).

Inspection of assessments to taxes.

405. The overseers are at liberty, upon making request of the assessor or collector of taxes concerned, to inspect any tax assessment or duplicate, and to extract any necessary particulars (*n*); and every assessor or collector of taxes must, within two days after the 20th July, make out and deliver to the overseers a list with the name and place of abode of every person who has not paid before the 20th July the assessed taxes due for any premises within the parish for the twelve months before the last 5th January. This list is open to public inspection (*o*).

Return of deaths.

406. The registrar of births and deaths must, four times a year, transmit to the overseers of every parish, the whole or any part of which is included in his district, a return, certified to be true, of the names, ages, and residences of all male persons of full age who have died within that parish or part of a parish, and also, when required by the overseers, of the names, ages, and residences of all women of full age who have so died. The names must be given in full (where known) with the dates of the deaths, and also the names and residences of the persons by whom information of the deaths was given to the registrar. The overseers must omit from any lists made by them the names of persons who appear from these returns to be dead (*p*). The returns are open to inspection by anyone who is on a list of voters, at reasonable times and without charge (*q*).

Ascertainment of persons disqualified by poor law relief.

407. The overseers must ascertain from the relieving officer acting for the parish on or before the last day of July the names of all persons who are disqualified for being inserted in the lists of electors for the parish by reason of having received parochial

(*m*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 29, extended to municipal voters in parliamentary and municipal boroughs; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 10, extended to counties; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1; extended to burgesses and county electors, County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4 (1). The public inspection is without fee between 10 a.m. and 4 p.m. any day except Sunday, during the first fourteen days after 22nd July (Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 29).

(*n*) Request is to be made between 10 a.m. and 4 p.m. any day during July except Sunday (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 12).

(*o*) On the same conditions as the list of those who have not paid rates, see note (*m*), *supra*; Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 12; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1.

(*p*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 11; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1. The dates are on or before 7th April, for the three months ending the preceding 31st March, on or before 22nd July for the period between 1st April and 15th July, on or before 8th September, or at such other time before the completion of the revision of the lists of the area to which the return relates as the barrister appoints, for the period beginning 16th July, and on or before 7th January for the period beginning 8th September or from the time for which the last preceding return was made and ending 31st December; and see title REGISTRATION OF BIRTHS AND DEATHS.

(*q*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 11; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1.

relief (*r*), and the relieving officer, upon application from the overseers, must produce, at the place and time required by them, the books in his possession containing the names of such persons (*s*).

Notice to claimants in counties.

408. In counties the overseers of every parish must on or before the 20th June publish a signed notice (*t*) requiring all persons qualified for a parliamentary vote by the ownership of any property wholly or partly within the parish, who are not upon the existing register, and also all persons so qualified, who, although on the register, do not retain the same qualification or have changed their place of abode as described in the register, and who desire to have their names inserted in the next register, to give or send to the overseers on or before the 20th July a signed notice in writing of their claim to vote (*a*). Simultaneously with the publication of this notice, the overseers must publish a copy of the existing register relating to their parish (*b*).

SUB-SECT. 4.—*Method of Publication of Notices, Lists, and Registers.*

How to be published.

409. Every document, the publication of which is required, must be published by being fixed in some public and conspicuous situation on the outside of the outer door or outer wall near the door of, in the case of publication by overseers, every church and public chapel in their parish (including places of public worship which do not belong to the Established Church), and in the case of publication by a town clerk, the town hall. In either case, if there be no such building, the document must be fixed in some public and conspicuous situation within the parish or borough (*c*).

The documents must also be fixed and kept in some public and conspicuous position in or near every post office or telegraph office, and in or near every public or municipal or parochial office within the parish to which it relates (*d*).

(*r*) Under the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 36; see p. 143, *ante*.

(*s*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 12; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1. By s. 16 of the last-mentioned Act, any person registered as a parliamentary voter in the register of voters for a parish may, by notice in writing delivered or sent to the clerk of the guardians for the parish or for the union containing the parish, require the clerk to send him a list giving the names and addresses as appearing in the books, either of all men of full age or of all persons who have during the period specified in the notice received out of the rates administered by the guardians either parochial relief or outdoor parochial relief, and who at the time of receiving such relief were recorded as resident in the parish or union, and the clerk of the guardians, on payment of fees after the rate allowed by the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), for returns by registrars of births and deaths, must send the list with the particulars specified in the notice.

(*t*) Registration Order, 1895, Sched. I., Form No. 1.

(*a*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 4.

(*b*) And must remove it after a period including at least two Sundays, and not later than 20th July (County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 3).

(*c*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 23.

(*d*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c 26),

SECT. 1.
Preparation of the Lists.

Length of time of publication.

410. The document must continue fixed for a period including two consecutive Sundays at least next after the day on or before which it is required to be published; and if it is destroyed, mutilated, effaced, or removed before the expiration of the period, it must be replaced (*e*).

Validity of lists etc.

411. No misnomer or inaccurate description of any person, place, or thing named or described in any list or register of voters, or in any notice required (*f*), is in any way to prevent the operation of the Registration Acts with respect to the person, place, or thing, provided they be so denominated as to be commonly understood (*g*). No list is invalidated by reason of not having been affixed in every place and for the full time required for publication (*h*).

When old list remains in force.

412. If no list has been made for any parish, or if, being made, it has not been affixed in any place as before mentioned, the register of voters for the parish then in force must be taken to be the list for the parish for the year then ensuing (*i*).

SUB-SECT. 5.—*The Preparation of the Lists for Revision.*

What lists are required.

413. The revising barrister in whose jurisdiction the registration of voters lies (*k*) will eventually require to have before him a series of lists of the persons proposed for the different franchises, which lists will form the subject of his revision, and which, when revised, will be the register. The foundation of these lists is in each case different, as is the method of their preparation, but they must all be prepared in such a manner as to give each person in each parish all the franchises to which he or she may be entitled, whether for parliamentary (*l*) or local government (*m*) purposes (*n*).

The lists required are:—

Ownership list.

(1) The ownership list (*o*), the foundation of which is the register

s. 9 (boroughs), extended to occupation voters in counties by the Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1 (1); to ownership voters by *ibid.*, s. 9 (2), with respect to publication in parishes situate wholly or in part in an urban sanitary district and not in a parliamentary borough; and to burgesses and county electors by the County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4. But the provision does not apply to any parish not wholly situate in an urban district (County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4 (2) (d)).

(*e*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 24.

(*f*) By the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18). Presumably the provision applies to all notices etc. under the Registration Acts.

(*g*) *Ibid.*, s. 101. See *Hinton* v. *Hinton* (1845), 7 Man. & G. 163; *Elliot* v. *St. Mary's Within, Carlisle, Overseers* (1847), 4 C. B. 76; *Jones* v. *Innous* (1855), 17 C. B. 290; *Allen* v. *Geddes* (1870), L. R. 5 C. P. 291.

(*h*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 26. See *Wells* v. *Stanforth* (1885), 16 Q. B. D. 244.

(*i*) *Ibid.*, s. 27.

(*k*) See pp. 217 *et seq.*, *post*.

(*l*) See pp. 139 *et seq.*, *ante*.

(*m*) See pp. 182 *et seq.*, *ante*.

(*n*) See Registration Order, 1895, *passim*.

(*o*) Applying to counties only (see p. 201, *post*).

extract (*p*), with marginal notes (*q*), which must be supplemented by the list of claims (*r*) and accompanied by the list of objections (*s*).

(2) The freemen list (*t*), also accompanied by lists of claims and objections. Freemen list.

(3) The reserved rights list (*a*), also accompanied by lists of claims and objections. Reserved rights list.

(4) The occupiers list (*b*), which is founded on the overseers' canvass, inquiries, the rate-book, preliminary lists etc. (*c*). This will also be accompanied by lists of claims and objections (*d*). Occupiers list.

(5) The old lodger list (*e*), which is founded on the claim of the claimants and nothing but the claim, but which will also be accompanied by lists of objections (*f*). Old lodger list.

(6) The new lodger list (*g*). This also is founded on claims, but will not be accompanied by lists of objections (*h*), though a notice of opposition (if any) to the claims must be handed to the revising barrister in court (*i*). New lodger list.

The overseers must also prepare a non-resident list—that is, a list of persons who are entitled in respect of the occupation of property to be elected aldermen or councillors of the county or borough, but are not entitled to be on the register of voters (*k*). Non-resident list.

(i.) *The Ownership List.*

414. The overseers must on or before the last day of July make out (*l*) an alphabetical list of all persons who have claimed a parliamentary vote in respect of the ownership of property (*m*). The list must give the christian name, surname, and place of abode of the claimant, the nature of his qualification, and the local or other description of the property and the name of the occupying tenant, as stated in the claim (*n*). List of claimants.

(*p*) Made by the clerk of the county council (see p. 195, *ante*).
(*q*) Made by the overseers (see p. 202, *post*).
(*r*) Claims made by claimants (see p. 205, *post*) and made into a list by the overseers (see *infra*). Any person desiring to oppose these claims must hand a notice of opposition to the revising barrister in court (see p. 229, *post*).
(*s*) Objections made by objectors (see pp. 209, 216, *post*) and made into a list by the overseers (see p. 216, *post*).
(*t*) Applying to boroughs only and made by the town clerk (see p. 202, *post*). As to notice of opposition to claims, see note (*r*), *supra*.
(*a*) Applying to boroughs only and made by the overseers (see p. 203, *post*). As to notice of opposition to claims, see note (*r*), *supra*.
(*b*) Applying to counties and boroughs and made by the overseers (see p. 203, *post*).
(*c*) See p. 196, *ante*.
(*d*) See pp. 206—216, *post*. As to notice of opposition to claims, see note (*r*), *supra*.
(*e*) Applying to counties and boroughs, and made by the overseers (see p. 204, *post*).
(*f*) Because the old lodgers claims form a list of voters (see p. 204, *post*).
(*g*) Applying to counties and boroughs and made by the overseers (see pp. 204, 208, 217, *post*).
(*h*) Because the new lodgers claims do not form a list of voters (see p. 204, *post*).
(*i*) See p. 229, *post*.
(*k*) See p. 205, *post*.
(*l*) Registration Order, 1895, Sched. I., Form No. 3.
(*m*) As to claims, see p. 205, *post*.
(*n*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 5. The form of claim gives alternative methods of identifying the property (see p. 205, *post*).

SECT. 1. Preparation of the Lists.

If the overseers have reasonable cause to believe that any person whose name appears in the list of claimants or in the copy of the register relating to their parish and received by them from the clerk of the county council (*o*) is not entitled to have his name upon the next register, they must add the word "objected" before his name on the margin of the list of claimants or of the register. In the same way, where they have reasonable cause to believe a person to be dead, they must add the word "dead." They must have a sufficient number of copies of the list and register with the marginal additions written or printed, and must sign and publish them on or before the 1st August. Copies must be kept for inspection and sale (*p*).

(ii.) *The List of Freemen.*

List of freemen.

415. In cities and boroughs the town clerk must on or before the last day of July make out (*q*) an alphabetical list of all the freemen of the city or borough entitled to a parliamentary vote, with their places of abode. The list must be signed, published, and dealt with in the same manner (*r*) as the ownership list (*s*).

Liverymen in London.

416. The Secondaries of the City of London must, on or before the 20th July, issue precepts to the clerks of the several livery companies requiring them to make out at the expense of the companies an alphabetical list (*a*) of freemen. The clerk must sign the list and transmit it with two printed copies to the Secondaries on or before the last day of July. The Secondaries must fix one copy in the Guildhall and the other in the Royal Exchange for fourteen days. The clerks of the companies must have copies printed for inspection and sale (*b*).

(*o*) See p. 195, *ante*.

(*p*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 5. The rates for sale prescribed by the above Act, Sched. D, Table 1, are :—

	s.	d.
Not exceeding 100 names	0	6
Exceeding 100 and not exceeding 200	1	0
,, 200 ,, ,, 300	1	6
,, 300 ,, ,, 400	2	0
,, 400	2	6

As to method of publication by overseers, see p. 199, *ante*.

(*q*) Form 5 of Sched. B of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18).

(*r*) Except that it is to be fixed on the door or wall of the town hall, and not of churches or chapels. See p. 199, *ante*.

(*s*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 14. It is to be noted that the list of freemen is not a "portion of the parliamentary register of electors relating to the parish" within s. 2 (1) of the Local Government Act, 1894 (56 & 57 Vict. c. 73); a person is not entitled by virtue of being on the list to be in the parochial electors list (*Hart* v. *Beard*, [1896] 1 Q. B. 54). In that case it was stated as a fact that it was not the practice to place the freemen's names under their different parishes; but no decision was given as to the correctness of the practice; see Lord RUSSELL OF KILLOWEN, C.J.'s, judgment.

(*a*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), Form No. 1, Sched. C.

(*b*) *Ibid.*, s. 20.

(iii.) *The Reserved Rights List.*

Reserved rights list.

417. In cities and boroughs the overseers must prepare, on or before the last day of July, an alphabetical list (*c*) of persons qualified to vote by virtue of any reserved right (*d*). The list must be signed, published, and dealt with in the same manner as those previously mentioned (*e*).

(iv.) *The Occupiers List.*

Divisions of list.

418. In both counties and boroughs the lists of parliamentary electors and county electors or burgesses must, so far as practicable, be made out together. The overseers of every parish in the county or borough must on or before the last day of July make out a list (*f*) of all persons qualified as parliamentary voters, county electors, or burgesses in respect of the occupation of property situate in the parish. The list must be made out in three divisions.

Division I. must comprise the names of persons qualified to be registered both as parliamentary electors and as burgesses or county electors.

Division II. must comprise the names of persons qualified to be registered as parliamentary electors but not as burgesses or county electors.

Division III. must comprise the names of persons qualified to be enrolled as burgesses or county electors but not to be registered as parliamentary electors (*g*).

Requirements of list.

419. Each list must state the surname and other name of every person, his place of abode, the nature of his qualification, and the situation and description of the qualifying property (*h*).

The overseers must sign each list (*i*) and have a sufficient number of copies of it written or printed. They must publish copies of the lists on or before the 1st August. Copies must be kept for inspection and sale (*k*).

Divisions I. and II. are deemed lists of voters for the parliamentary county or parliamentary borough, and divisions I. and III. burgess lists for the municipal borough or lists of county electors for the administrative county (*l*).

(*c*) Registration Order, 1895, Sched. III., Form D, No. 2.

(*d*) See pp. 177, 181, *ante*.

(*e*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 13.

(*f*) Registration Order, 1895, Scheds. II., III., Form D, No. 1.

(*g*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 15; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1; County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4.

(*h*) *Ibid.*

(*i*) See *Morgan* v. *Parry* (1856), 17 C. B. 334, where it was held that non-signature by overseers did not invalidate the lists. See also *Wells* v. *Stanforth* (1885), 16 Q. B. D. 244.

(*k*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 15; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1; County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4. For conditions of publication, sale etc., see pp. 199, 200, 202, *ante*.

(*l*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 15 (7); Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1; County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4.

SECT. 1. Preparation of the Lists.

The lists and each division must, if the local authority (*m*) direct, be framed in parts for polling districts or wards; and where the polling districts and wards are not conterminous, so that the parts may be conveniently compiled or put together to serve either as lists for the polling districts or as ward lists (*n*).

The lists and each division are to be alphabetical, except in the administrative county of London, where the names of the electors must appear in the order of the rate-book, unless the local authority has otherwise directed (*o*), and except in other cases where the local authority has given any special directions as to making out the lists according to streets or the order of the rate-book (*p*).

(v.) *The Old Lodger List.*

Old lodger list.

420. The overseers in every parish, both in counties and boroughs, must on or before the last day of July make out a list (*q*) of all the old lodger claimants (*r*), and if they have reasonable cause to believe that any person whose name is entered on the list is not entitled to be registered or is dead (*s*), must add in the margin of the list opposite his name the words "objected to" or "dead," as the case may be (*t*).

The list must be signed (*a*), published, and otherwise dealt with in the same manner as the occupiers list. For the purposes of the Parliamentary Registration Acts the lists are deemed lists of voters (*t*).

(vi.) *The New Lodger List.*

New lodger list.

421. The new lodger list is entirely made up from claims, and will be more conveniently treated of under that heading (*b*).

(*m*) *I.e.*, as regards a parliamentary borough, if any, which is not a municipal borough, the authority having power to divide the parliamentary borough into polling districts, *i.e.*, county council (County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4). As regards a municipal borough the council of the borough (Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 21). In counties the county council.

(*n*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 15 (8); Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1; County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4.

(*o*) County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 5.

(*p*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 21.

(*q*) Registration Order, 1895, Scheds. II., III., Form D, No. 2.

(*r*) See p. 207, *post*.

(*s*) For method of obtaining name of dead person, see p. 198, *ante*.

(*t*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 22; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1. If the overseers add the word "objected" they must appear by themselves or by some person on their behalf before the revising barrister in support of their objection, otherwise the barrister must retain the name on the list (*Cartwright* v. *Shrewsbury* (*Town Clerk*), [1909] 2 K. B. 169). A direction to the overseers that where parties are parent and son or master and servant there is "reasonable cause to believe that he is not entitled to be registered" does not relieve the overseers of the duty of inquiry in each case (*ibid.*).

(*a*) See *Morgan* v. *Parry* (1856), 17 C. B. 334.

(*b*) See p. 207, *post*.

(vii.) *The Non-resident List.*

SECT. 1. Preparation of the Lists.

Non-resident list.

422. Except in the administrative county of London (*c*), the overseers of every parish must, at the same time that they make the parish burgess or county electors list, make a list of persons qualified by the occupation of property in the parish to be councillors or aldermen of the borough or county, but not to be burgesses or county electors, as being resident within fifteen miles but more than seven miles from the borough or county (*d*).

SUB-SECT. 6.—*Notice of Claims and Objections.*

(i.) *Notice of Claim.*

Ownership claims.

423. The law with regard to the notice of claim which must be given by claimants depends upon the franchise sought (*e*).

Every ownership claimant who is not on the register for the parish in which he seeks an ownership vote, or who has a different qualification (*f*) or place of abode to that described in the register (*g*), must give or send to the overseers on or before the 20th July a signed notice in writing of his claim (*h*). A notice delivered on the 20th July, even though that day falls on a Sunday, is properly served (*i*).

Proof of the notice is not necessary if the overseers have included the name of the claimant in their list (*k*); and therefore if his

(*c*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 77; Registration Order, 1895, Sched. III., Instruction 8.

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 49; counties, County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 12; for forms, see Registration Order, 1895, Scheds. II., III., Form G. Two copies of the non-resident list are to be sent by the overseers (Registration Order, 1895, Sched. II., Part II., 45, Sched. III., Part II., 44).

(*e*) The forms for the respective claims must be strictly observed, *e.g.*, names must be given in full; but see the Irish case, *Carroll* v. *Beggs* (1864), 15 I. C. L. R. 370, Ex. Ch.

(*f*) Where a voter had occupied land of over £50 value, and had then, after giving up that land, taken another farm of sufficient rental and had not made a new claim, his name was struck off the register (*Burton* v. *Gery* (1847), 5 C. B. 7). A woman cannot claim a parochial vote in respect of the ownership of property (*Drax* v. *Ffooks*, [1896] 1 Q. B. 238, C. A.).

(*g*) See p. 199, *ante*.

(*h*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 4; for form, see Registration Order, 1895, Sched. I., Form No. 2. In every claim the place of abode should be entered with the name (if any) of the street, lane, or other locality and the number (if any) in such street, lane, or other locality, and such entry should be made in all cases in such a manner as will afford a full and sufficient address for a person entered, if a letter is addressed to him by post.

The description of the qualifying property should specify the street, lane, or other like place in the parish (if any) and number of house (if any) where the property is situate, or name of the property, if known by any, or name of the occupying tenant; or if the qualification consists of a tithe rentcharge, of the name of the rectory, vicarage etc. to which the rentcharge belongs, then the names of the owners of the property out of which such rent is issuing, and the situation of the property, and a statement of the registration of the claimant in respect of such rentcharge in the register in force in the year 1884. The description of the qualifying property should in all cases be such as will afford full and sufficient means of identifying such property (*ibid.*).

(*i*) *Rawlins* v. *West Derby Overseers* (1846), 2 C. B. 72.

(*k*) *Davies* v. *Hopkins* (1857), 3 C. B. (N. S.) 376, which decided that, the overseers having placed a claimant's name in the list of voters, it is not competent to

SECT. 1. Preparation of the Lists.

name is in fact on the list, it does not signify if the notice is delivered after the proper date (*l*). Even if no notice at all be given to the overseers, he is entitled to be on the register, the other necessary conditions being fulfilled (*m*).

Correcting misdescriptions in ownership list.

424. Any person whose name appears on the ownership list of voters then in force and whose place of abode is not correctly stated therein, or who has received a notice of objection grounded on the second column (*n*) of the list, and who possesses on the 15th July the same qualification as that for which his name was originally inserted, may make and subscribe a declaration in the prescribed form correcting the misdescription before any person authorised to administer oaths in the High Court (*o*). All such declarations must be duly dated, and must, on or before the 5th September (*p*), be sent to the clerk of the county council, who, after indorsing and initialling them, will forward them to the revising barrister (*q*).

Notice by occupation claimant.

425. Every person whose name has been omitted in the occupation list of voters and who claims as having been qualified on the last 15th July (*r*), or who wishes to be registered for a different qualification than that for which his name appears in the list, must, on or before the 20th August (*s*), give or cause to be given a notice in the prescribed form (*t*) to the overseers of the parish for which he claims (*a*).

the revising barrister to require proof of the notice of claim. WILLIAMS, J., at p. 387, said: "If the legislature really did intend that such proof should be given, it is somewhat strange that they did not in terms say so. One would naturally have expected if such had been the intention that the section would have gone on to say that the claimant should be put to proof that he had duly given the notice required by s. 4. According to the ordinary rule of construction of Acts of Parliament, the same construction must be put upon the same language in different parts of the Act, and when we turn to s. 37" (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), "we find that where the legislature intended to require proof of the giving of a notice of claim, they have expressly said so; for where the claimant's name is omitted by the overseer, the revising barrister is to insert it in case it shall be proved to his satisfaction that the claimant gave due notice of such his claim to the said overseers and that he was entitled on the last day of July then next preceding to be inserted in the said list of voters." WILLES, J., at p. 389, expressed the opinion that "if the overseers improperly insert a claimant who has not given due notice they may be indicted"; but on this point see *R.* v. *Hall*, [1891] 1 Q. B. 747.

(*l*) *Leonard* v. *Alloways* (1878), 2 Hop. & Colt. 411, following *Davies* v. *Hopkins* (1857), 3 C. B. (N. S.) 376. *Davies* v. *Hopkins* was quoted with approval in *M'Grorey* v. *Chambers*, [1894] 2 I. R. 129, C. A. Other Irish cases are *Hughes* v. *Barnett* (1857), 7 I. C. L. R. 369, Ex. Ch.; *O'Brien* v. *Fenton* (1864), 15 I. C. L. R. 380, Ex. Ch.

(*m*) *Davies* v. *Hopkins*, *supra*, *per* WILLIAMS, J., at p. 387,

(*n*) See p. 209, *post*.

(*o*) Registration Order, 1895, Sched. I., Form No. 7.

(*p*) County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 6 (1).

(*q*) County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 10; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (2); County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 6.

(*r*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 7.

(*s*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 3 (1).

(*t*) Registration Order, 1895, Scheds. II., III., Form II, No. 1.

(*a*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 15, as regards boroughs; applied to counties (Registration Act, 1885 (48 & 49 Vict.

It is sufficient in the case of the occupiers list for the notice to be signed in the claimant's name by the clerk to an agent duly authorised to make and sign a claim on his behalf (*b*). The notice need not specify the list in which the name is claimed to be inserted (*c*).

Lodger claims.

426. The claim of every person desirous of being registered as a voter in respect of the occupation of lodgings must, after the last day of July and on or before the 20th August (*d*), be delivered in the prescribed form (*e*) to the overseers of the parish in which the lodgings are (*f*). The claim is an essential part of the lodger's qualification (*g*), and the declaration and attestation annexed (*h*) to the form are a necessary part of the claim (*i*).

A declaration of residence which is dated before the expiration of the year of residence to which the declaration refers is a nullity, and a claim containing such a declaration is bad on the face of it (*k*). Absence of a date from the attestation will also invalidate

c. 15), s. 1 (1)). Where a notice of claim was erroneously addressed to the overseers of a division of a parish instead of to the overseers of the whole parish it was held to be such a direction as to be "commonly understood" within s. 101 of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18) (*Elliot* v. *St. Mary's Within, Carlisle, Overseers* (1847), 4 C. B. 76). Notice of claim is essential, and must be proved to the satisfaction of the revising barrister, and the fact that it has been accepted and published by the overseers is not conclusive (*Re Sale* (1880), Colt. 152).

(*b*) *Brown* v. *Tombs*, [1891] 1 Q. B. 253; *Burns* v. *Cassells* (1891), 19 R. (Ct. of Sess.) 287.

(*c*) *Firth* v. *Widdicombe* (1871), L. R. 7 C. P. 172. The claimant in this case was a £12 occupier, but the principle holds good. The notice gave in substance all that was required to identify the list.

(*d*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 3 (1). The notice of claim must be sent to the overseers within the prescribed time, and the revising barrister has no jurisdiction under s. 18 of the Registration Act, 1885 (48 & 49 Vict. c. 15), to allow a claim not so sent (*Whitwell* v. *North Riding of Yorkshire (Clerk of the Peace)* (1889), Fox. & S. Reg. 152); and see *Re Sale* (1880), Colt. 152 (occupation claim).

(*e*) Registration Order, 1895, Scheds. II., III., Form H, No. 2. If the claim is in respect of different rooms successively occupied as lodgings in the same house, the notice of claim must specify each room or set of rooms so occupied. If there are two joint lodgers, the yearly value of the lodgings must be £20 or upwards. If a lodger during any part of the qualifying period, not exceeding four months at any one time, has in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him been absent from his lodgings although he retained them in his occupation, he is entitled to be registered as if he had inhabited his lodgings during that period (*ibid.*); and see p. 177, *ante*, and *Topping* v. *Keogh*, [1910] 2 I. R. 1.

(*f*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 30 (2) (boroughs); Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 2; Registration Act, 1885 (48 & 49 Vict. c. 15), ss. 1, 3 (counties).

(*g*) *Hersant* v. *Halse* (1886), 18 Q. B. D. 412.

(*h*) S. 30 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), contained words requiring the declaration and attestation. The words were repealed by the Statute Law Revision Act, 1893 (56 & 57 Vict. c. 14), but are replaced by the form in the Registration Order, 1895.

(*i*) See Irish cases, *Hanbidge* v. *Beveridge* (1889), 26 L. R. Ir. 423, C. A.; *Jones* v. *Beveridge* (1886), 20 L. R. Ir. 380, C. A.; see p. 175, *ante*.

(*k*) *Jones* v. *Kent* (1888), 22 Q. B. D. 204, *per* Lord COLERIDGE, C.J., at p. 207, following *Hersant* v. *Halse*, *supra*.

SECT. 1. Preparation of the Lists.

a claim (*l*). Signature and attestation are to be contemporaneous acts (*m*), and if the witness is not present when the claim is signed, though he sign on the same day at the claimant's request, the claim is bad (*n*).

Where a person is entered as a lodger on the register in force, and desires to be entered on the next register in respect of the same lodgings, he may so claim by sending notice of his claim in the prescribed form (*o*) to the overseers of the parish on or before the 25th July (*p*).

Freemen.

427. Persons claiming as freemen for any city or borough whose names have been omitted from the list must give notice (*q*) of their claim to the town clerk according to the prescribed form (*r*), or to the like effect (*s*).

Liverymen.

In the City of London, persons whose names have been omitted from the list of freemen and liverymen must, on or before 20th August (*t*), give notice of their claim in the prescribed form (*a*), or to the like effect, to the Secondaries and to the clerk of the company in whose list they claim to be inserted (*b*).

Omitted persons.

428. Persons omitted from the reserved rights list must send in notice of their claim to the overseers before 20th August (*c*) in the prescribed form (*d*).

Declaration correcting mistakes in list.

429. Any person who is entered on any list of voters, except the ownership list in counties, and whose name or place of abode, or the nature of whose qualification or the name and situation of whose qualifying property is not correctly stated in the list, or in respect of whom there is any other error or omission in the list, may, whether he has received a notice of objection or not, if he thinks fit, make and subscribe a declaration, in the prescribed form (*e*), before any

(*l*) *Smith* v. *Chandler* (1888), 22 Q. B. D. 208, following *Jones* v. *Kent* (1888), 22 Q. B. D. 204; but as to amendment in such cases, and the general effect at the hearing of irregularities, see p. 222, *post*.

(*m*) *Body* v. *Halse*, *Hunt* v. *Halse*, *Fenning* v. *Halse*, [1892] 1 Q. B. 203, *per* Lord COLERIDGE, C.J., at p. 205.

(*n*) *Ibid*.

(*o*) Registration Order, 1895, Scheds. II., III., Form H, No. 2. See note (*e*) on p. 207, *ante*.

(*p*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 22, boroughs; extended to counties, Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 2. Where he has not sent in his claim before this date, there is nothing to prevent him sending in his claim as a new lodger.

(*q*) In *Nagle* v. *Campbell*, [1896] 2 I. R. 326, C. A., it was held that a freeman who during the qualifying period has changed his place of abode to one within another division of the borough or the seven miles limit need not serve a fresh notice of claim.

(*r*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), Sched. B, Form No. 7.

(*s*) *Ibid*., s. 15.

(*t*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 3 (1).

(*a*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), Sched. C, Form No. 2.

(*b*) *Ibid*., s. 20.

(*c*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 3 (1).

(*d*) Registration Order, 1895, Sched. III., Form II, No. 1.

(*e*) *Ibid*., Scheds. II., III., Form M.

person authorised to administer oaths in the High Court. The declaration must be duly dated and must be sent, on or before the 5th (*f*) September, to the clerk of the county council or the town clerk, who will indorse on it a signed and initialled memorandum, stating the date when he received it, and naming the declarant and the list referred to, and will deliver it to the revising barrister at his first court (*g*).

Corrupt and illegal practices list.

430. Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom. Such claims must be sent in within the same time and must be dealt with in like manner as other claims (*h*).

(ii.) *Notice of Objection.*

Right to object.

431. Any person whose name appears in any list (*i*) of parliamentary voters for any county (*k*), city, or borough, may object to any other person upon any list of parliamentary voters for that county, city, or borough, as not having been entitled on the 15th July (*l*) last to have his name inserted in the list. The right to object is given by the mere presence of the objector's name on the list (*m*).

(*f*) It is essential that the notice be sent in due time (*Daking* v. *Fraser* (1885), 16 Q. B. D. 252).

(*g*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 24. The declaration may be contradicted by evidence (*Tranior* v. *Starbuck* (1893), Fox & S. Reg. 340).

(*h*) Corrupt and Illegal Practices Prevention Act, 1883 (45 & 46 Vict. c. 51), s. 39 (4).

(*i*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 7, 17; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 2 (1). The words of s. 7 (counties) of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), are, "Every person who is upon the register for the time being." S. 2 (1) of the Registration Act, 1885 (48 & 49 Vict. c. 15), provides that the list of occupation voters in a parliamentary county shall be deemed part of the list of voters, and that any person whose name appears in the list of voters may object to the name of any other person therein as if he were on the register of voters for the county. By s. 2 (2) of the same Act, "In the list of voters and register of voters in a parliamentary county there shall be separate lists of (a) ownership voters; (b) occupation voters other than lodgers; and (c) lodgers." By s. 6 of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), the list of ownership claimants is a list of voters. The words of s. 17 (boroughs) of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), are slightly different from s. 7 (counties). They are, "Every person whose name shall have been inserted in any list of voters for any city or borough." By s. 22 of the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), the old lodger list is deemed to be a list of voters; so also are the lists of reserved rights and freemen (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 13, 14, 20 (freemen in City of London)).

(*k*) By the Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), s. 9 (3), "county" for all such purposes means "county division."

(*l*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 7; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1.

(*m*) W. objected to a name on the list, his own name having been duly objected to. At the revision W.'s name was struck off the list before the objection which he had made was taken. It was held that it was sufficient that his name was on the list at the time of the service of the notice of objection (*Pease* v. *Middlesbrough* (*Town Clerk*), [1893] 1 Q. B. 127).

An objector's name had been inserted in the list of voters, although he had been reported guilty of an illegal practice at an election, and was therefore not

SECT. 1. Preparation of the Lists.

Any person whose name appears on any list of county electors, or burgesses in a county or borough, may object to the name of any other person on the list of county electors or burgesses for the same county or borough (*n*).

Notice to overseers etc.

432. Every person so objecting (except overseers objecting to persons in the ownership list (*o*)) must on or before the 20th August (*p*) give notice (*q*) to the overseers (*r*); or, if the objection relates to the list of freemen in a borough, to the town clerk (*s*), and in the City of London to the Secondaries and the clerk of the company whose list is concerned (*t*). The notice must be in the prescribed form (*a*), and the list in which the name of the person objected to appears must be sufficiently specified (*b*).

capable of voting. He was struck off at the revision at which his own objection was heard, and it was held that, his name having been inserted in the list, he was not incapacitated from being an objector (*Barr* v. *Chambers* (1887), 22 L. R. Ir. 264, C. A.).

(*n*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 18; County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4 (1).

(*o*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 7. As to such objections, see p. 202, *ante*.

(*p*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 3 (1).

(*q*) There is a slight difference in the sections (7 and 17) of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), relating to objections in counties and boroughs. That relating to counties provides for the notice to be given to the "overseers . . . of the parish . . . to which the list of voters containing the name of the person objected to may relate," while s. 17 (boroughs) enacts that the notice is to be given to the "overseers who have made out the list in which the name of the person so objected to has been inserted." Where a notice of objection was served on an overseer who had not joined the other overseers in signing the list of voters, the service was held good (*Beenlen* v. *Hockin* (1846), 4 C. B. 19).

(*r*) See p. 194, *ante*.

(*s*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 7, 17.

(*t*) *Ibid.*, s. 20.

(*a*) Counties (Registration Order, 1895, Ownership, Sched. I., Form No. 4; Occupation, Sched. II., Form I., No. 1); boroughs (Registration Order, 1895, Occupation, Sched. III., Form I., No. 1); City of London freemen and liverymen (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), Sched. C, Form No. 5). Presumably the notice of objection to freemen in boroughs should follow the usual borough form (*supra*), with the difference that it is addressed to the town clerk. It was held in *Smith* v. *Holloway* (1865), L. R. 1 C. P. 145, that it was not necessary to give a separate notice in respect of each voter objected to, and that there might be one general notice if the names of the persons objected to were set out in a schedule. It is to be noted, however, that this case was decided on the form prescribed by the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), and that the words prescribing the form or a notice "to the like effect" have been repealed.

(*b*) If the list referred to is made out in divisions, the notice should specify the division to which the objection refers; and if the list contains two or more persons of the same name, should distinguish the person intended to be referred to (footnote (a) to Form I. in Registration Order, 1895, Scheds. II., III.), although in *Chorlton* v. *Johnson Ree's Case* (1868), L. R. 4 C. P. 400, where there were lists of ownership voters and claimants, and also lists of £12 occupiers and claimants, it was held that the list need not be specified. The notice there, however, was given in the form provided by the statute. In *Aldridge* v. *Medwin* (1868), L. R. 4 C. P. 464, there were two lists—namely those of rated occupiers and of voters under reserved rights—and the only name on the latter list was that of the objector. The objector did not specify the list to which the objection referred, but the overseers were not misled. The court (BOVILL, C.J., BYLES, KEATING and BRETT, JJ.) found that they could not

The objector must sufficiently set out where his own name appears on the register or list of voters (*c*). He must state his actual place of abode although differing from that on the register (*d*). If he has two *bonâ fide* places of abode he may state either (*e*). Where the notice is sent by post (*f*) mere insufficiency of address will not invalidate it if in fact it reaches the overseers (*g*), and the prescribed mode of postage (*f*) need not be followed if in fact the notice reaches the overseers (*h*).

Notice to person objected to.

433. The objector must also, on or before 20th August, give or cause to be given, or leave or cause to be left (in reasonable time and manner (*i*)) at the actual place of abode (*k*) of the person objected to, a notice in the prescribed form (*l*).

say that there was not evidence enough to satisfy the revising barrister that the description of the list in the notice was such as to be commonly understood to apply to the list of occupiers. Where the overseers make out more than one list, the particular list must be stated (*Barton* v. *Ashley* (1845), 2 C. B. 4). Where one objected to a voter being "retained in the list of persons entitled under the Reform Act," the notice was held to sufficiently indicate the £10 occupation list (*Huggett* v. *Lewis* (1854), 15 C. B. 245). It is unnecessary to specify the name of the ward on the list of which the name objected to appears (*Sagar* v. *Clare* (1900), 82 L. T. 599).

(*c*) Where an objector described himself as on the list of parliamentary voters "for the parish of the borough of Liskeard," it was held a proper description of the municipal borough of Liskeard, having separate overseers and rates, and forming part of the parliamentary borough of Liskeard, although part of the "parish of Liskeard," also with separate overseers and rates, was in the parliamentary borough (*Sargent* v. *Rodd* (1879), Colt. 14). Again, "on the list of voters for the borough of D. and the township of E. S." was held sufficient description where the borough consisted of two parishes, E. S. and S. D., each with separate overseers and separate lists (*Oram* v. *Cole* (1864), 18 C. B. (N. S.) 1). But see *Crowther* v. *Bradney* (1863), 15 C. B. (N. S.) 536.

(*d*) *Calver* v. *Roberts* (1871), 1 Hop. & Colt. 616; and see *Knowles* v. *Brooking* (1846), 2 C. B. 226. See also *Humphrey* v. *Earle* (1887), 20 Q. B. D. 294.

(*e*) *Curtis* v. *Blight* (1861), 11 C. B. (N. S.) 95. The true place of abode is a question of fact for the revising barrister (*ibid.*). See also *Melbourne* v. *Greenfield* (1859), 7 C. B. (N. S.) 1.

(*f*) As authorised by the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18). s. 101. The conditions of s. 100 of this Act also apply; see *Bishop* v. *Helps* (1845), 2 C. B. 45, and pp. 214—216, *post*.

(*g*) *Jones* v. *Innous* (1855), 17 C. B. 290; followed in *Goodsell* v. *Innous* (1855), 17 C. B. 295.

(*h*) *Smith* v. *Huggett* (1861), 11 C. B. (N. S.) 55; also see *Bishop* v. *Helps*, *supra*.

(*i*) In *Watson* v. *Pitt* (1848), 5 C. B. 77, the barrister held that the time and method of service employed were unreasonable, and the court confirmed the decision. WILDE, C.J., said, at p. 85: "I think the time and mode of service must be such as to afford reasonable ground for presuming that the notice will reach the hands of the party for whom it is intended."

(*k*) *Allen* v. *Greensill* (1847), 4 C. B. 100. In this case the voter had left the place of abode described in the list, and the notice was left at his office. It was held that the service was bad. WILDE, C.J., said, at p. 104: "The question is whether if the overseers state in the list a place of abode which is incorrect the rights of the voter are to be affected by a blunder which it is no part of his duty to correct and in a matter over which he has no control. When the statute prescribes the duty of the objector in the service of the notice it gives him the choice of three modes. If he chooses to select service at the place of abode as described in the list he must take the risk of its turning out not to be the true place of abode. He may always guard himself against mistakes by a personal service or by sending the notice by post." This case was followed in *Gifford* v. *St. Luke's, Chelsea Overseers* (1889), 24 Q. B. D. 141.

(*l*) Registration Order, 1895, Ownership, Sched. I., Form No. 5 (a), (b);

SECT. 1. Preparation of the Lists.

Notice to occupier.

In the case of ownership voters or claimants in counties, wherever the place of abode of the person objected to, as described in the list, is not in the parish or township to which the list relates, and the name of the occupying tenant of the whole or part of the qualifying property, with his place of abode, appears in the list, a duplicate notice in the prescribed form, duly signed (*m*), must be given to, or left at the abode of, the occupying tenant (*n*).

The objector's place of abode must be sufficiently described in the notice itself (*o*) without the aid of reference to the register (*p*), and it must be his actual place of abode and not that described in the register (*q*).

The place of abode of the person objected to must also be sufficiently described (*r*).

The objector must sufficiently state where his name appears on the register (*s*), and also the form in which the name of the person

Occupation, Scheds. II., III., Form I., No. 2; freemen in City of London, Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), Sched. C, Form No. 4. The language of the form need not be servilely followed. Thus, an objection to A. B. instead of to "your name" being retained was held sufficient (*Force* v. *Floud* (1863), 15 C. B. (N. S.) 543).

(*m*) Registration Order, 1895, Sched. I., Form No. 5 (a), (b).

(*n*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 7. See *M'Farland* v. *Burnett* (1890), 1 Laws. Reg. Cas. 286, C. A.

(*o*) Where an objector was described on the list as of a certain town only, but in his notice gave his full address, the superfluity was held not to invalidate the notice (*Pruen* v. *Cox* (1845), 2 C. B. 1). If the description given affords sufficient information, the name of the county or town near the residence need not be added (*Gadsby* v. *Warburton* (1844), 7 Man. & G. 11; *Hicks* v. *Stokes*, [1893] 1 Q. B. 124). Where street and number, but not parish, were given, it was held sufficient (*Sheldon* v. *Flatcher* (1847), 5 C. B. 14); but in *Humphrey* v. *Earle* (1887), 20 Q. B. D. 294, where an objector described himself as "of Churchyard" on the list of parliamentary voters for the parish of Petersfield, the address was held insufficient. What is sufficient address is a question for the revising barrister (*Jones* v. *Pritchard* (1868), L. R. 4 C. P. 414; *Thackway* v. *Pilcher* (1866), L. R. 2 C. P. 100). But where the description was neither bad on the face of it nor proved insufficient in fact, the court reversed the revising barrister's decision (*Powell* v. *Caswell* (1849), 8 C. B. 14).

(*p*) Where objector took the address from the register, it not being his actual abode, the notice was held bad (*Melbourne* v. *Greenfield* (1859), 7 C. B. (N. S.) 1); and see *Wills* v. *Adey* (1846), 2 C. B. 246.

(*q*) *Melbourne* v. *Greenfield*, *supra*. Such a misdescription is not cured by s. 101 of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), which only applies when there is inaccuracy or mistake in describing that which the party intended to describe (*ibid.*). See also *Woollett* v. *Davis* (1847), 4 C. B. 115; and, as to mistake in giving place of abode, *Prescott* v. *Lee*, [1899] 2 Q. B. 273, C. A.

(*r*) Where, instead of stating it in the body, the objector gave the address of the person objected to at the back of the notice, the notice was held good though not strictly following the form (*Linforth* v. *Butler*, [1899] 1 Q. B. 116).

(*s*) In *Samuel* v. *Hitchmough* (1862), 13 C. B. (N. S.) 3, "on the list of voters for the parish of P." where there were two lists—£10 occupiers and reserved rights—was held sufficient as strictly following the form given in Sched. B, No. 11 of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18); and in the case of a township being divided into two polling districts under the Parliamentary Electors Registration Act, 1868 (31 & 32 Vict. c. 58), with separate lists "on the register of voters for the township" was held sufficient description (*Chorlton* v. *Tonge* (1871), L. R. 7 C. P. 178). But in *Tudball* v. *Bristol* (*Town Clerk*) (1843), 5 Man. & G. 5 (followed in *Bright* v. *Devenish* (1866), L. R. 2 C. P. 102), it was held that Form No. 11 in

objected to appears (*a*). A mere inaccuracy in this, if the description be such as to be commonly understood, will not vitiate the notice (*b*).

Stating grounds of objection.

434. Any notice of objection to any person on the list of ownership claimants for a parish in a county may be given without stating the grounds of objection (*c*), but with that exception no notice of objection given under the provisions set forth, other than a notice to the overseers, is valid unless the ground or grounds of objection be specifically stated therein (*d*). This provision is satisfied by naming the column or columns (*e*) of the list on which the objector grounds his objection, unless the objection is outside the columns (*f*). If the objection be grounded on the third column (*g*), it is necessary to state in the notice whether the objection relates to the nature of the voter's interest in the qualifying property (*h*) or to its

Sched. B of the Act of 1843 was applicable only to household voters, and that "on the list of voters for the parish of C." was an insufficient description of the objector who was on the list of freemen. Where a parliamentary borough was made up of six separate places with separate lists, one of which was a municipal borough of the same name, "on the list of voters for the borough of P." was held sufficient description of an objector on the municipal borough list although the words "borough of P." were used to mean the parliamentary borough in the early part of the notice (*Moon* v. *Andrew* (1868), L. R. 4 C. P. 461). See also *Eidsforth* v. *Farrer* (1846), 4 C. B. 9; *Feddon* v. *Sawyers* (1852), 12 C. B. 680; *Crowther* v. *Bradney* (1863), 15 C. B. (N. S.) 536; *Allen* v. *Geddes* (1870), L. R. 5 C. P. 291; *James* v. *Howarth* (1879), 5 C. P. D. 225. The parish on the list of which the objector's name is must be stated (*Wood* v. *Chandler* (1887), 20 Q. B. D. 297).

(*a*) In a borough where the overseers made out two lists (one of potwallers) a notice describing the person objected to as "on the list of persons entitled to vote as householders" was held good although the words "as householders" were not in the form. "If the insertion of the words could have misled the party objected to then the notice not being in strict compliance with the form would have been bad" (*Allen* v. *House* (1845), 7 Man. & G. 157, *per* TINDAL, C.J.). It is enough to state the list showing the kind of franchise, and is unnecessary to set out the particular parochial list (*Mortlock* v. *Farrer* (1879), 5 C. P. D. 73, argued with *Hall* v. *Cropper*, *ibid.*, and approving *Wansey* v. *Perkins* (*Quigley's Case*) (1845), 7 Man. & G. 127).

(*b*) *Lambert* v. *St. Thomas, New Sarum, Overseers* (1852), 12 C. B. 642.

(*c*) See Registration Order, 1895, Sched. I., Form No. 5 (b), and Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 7.

(*d*) County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 6; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 26 (boroughs). See *Bennett* v. *Brumfitt, Alderson's Case* (1868), L. R. 4 C. P. 407.

(*e*) The columns are as follows: col. 1, name; col. 2, place of abode; col. 3, nature of qualification; col. 4, description of qualifying property.

(*f*) But in *Quinlan* v. *M'Carthy* (1890), 28 L. R. Ir. 246, C. A., it was held that where the receiving of poor relief was the ground of objection it was not sufficient to name the column. This case was decided on the Parliamentary Registration (Ireland) Act, 1885 (48 & 49 Vict. c. 17), s. 20 of which is practically identical with s. 6 of the County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), with the exception that the proviso as to the third column is not found. O'BRIEN, C.J., said: "We must endeavour to give some intelligible meaning to the word "specifically," and in my opinion we should hold, as I hold, that grounds of objection outside the columns, such as the ground of disqualification in this case, should be specifically stated, that is to say, should be set forth with reasonable particularity."

(*g*) *I.e.*, nature of qualification.

(*h*) Where it was contended for the objector that the voter occupied a house entitling him to a borough vote, and was therefore not entitled to the county

SECT. 1. Preparation of the Lists.

value (that is to say, amount of rental (*i*)) or to both. Each of these last-mentioned grounds of objection must be deemed a separate ground of objection as well as any objection grounded on any one of the other columns (*k*).

Signature and date of notices.

435. Every such notice of objection must be signed by the objector (*l*). It is unnecessary for it to be dated on the day of signature provided the date is within the period allowed for objecting and that the objector is then qualified to object (*m*). It is essential that the date of the year appear (*n*).

How notice to be sent.

436. It is sufficient in every case of notice to any person objected to if the notice is sent by post (*o*), postage paid, directed to the place of abode of the person to whom it is sent as described in the list of voters (*p*). Any such notice of objection must be delivered, open and in duplicate, both original and duplicate being signed by the objector (*q*), to the postmaster or his managing

franchise, a notice stating that the objection was grounded on the third column and related to the nature of the voter's interest in the qualifying property was held good (*Simey* v. *Dixon* (1871), L. R. 7 C. P. 190).

(*i*) Definition in County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 17.

(*k*) County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 6. The Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 26, does not specifically apply the provisions of the other section to boroughs, but presumably the conditions are the same for both counties and boroughs. By s. 7 of the County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), no person objected to under the provisions of that Act (*i.e.*, s. 6) shall be required to give evidence before the revising barrister in support of his right to be registered otherwise than as such right shall be called in question in such ground or grounds of objection.

(*l*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c, 18), ss. 7, 17. A stamped facsimile of the objector's ordinary signature will suffice (*Bennett* v. *Brumfitt* (1867), L. R. 3 C. P. 28). The Registration Acts and the Registration Order, 1889, Sched. II., Form No. 1, are sufficiently complied with if the signature of the objector precedes the name objected to (*Sutton* v. *Wade*, [1891] 1 Q. B. 269). The objector need not copy the spelling of his name in the list if it be misspelt therein, provided it is so stated as to be commonly understood (*Hinton* v. *Hinton* (1845), 7 Man. & G. 163).

(*m*) *Jones* v. *Jones* (1865), L. R. 1 C. P. 140.

(*n*) *Beenlen* v. *Hockin* (1846), 4 C. B. 19 ; and see *Freeman* v. *Newman* (1883), 12 Q. B. D. 373.

(*o*) Where an objector produced a stamped duplicate notice, and the original notice produced by the person objected to did not agree with it, it was held that the objector might rely on the original as proof of service (*Norris* v. *Pilcher* (1868), L. R. 4 C. P. 417).

(*p*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 100 ; County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 9 ; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 40. The place of abode must be that given in the list sent by the clerk of the county council to the overseers, although the voter has altered his address and the overseers have altered the list (*Noseworthy* v. *Buckland-in-the-Moor* (1873), L. R. 9 C. P. 233). The addition of the post town and county to the address on the list does not invalidate the notice (*Cotton* v. *Prall* (1866), L. R. 2 C. P. 86), nor does the omission of the name of the township (*Flint* v. *Sharp* (1855), 17 C. B. 281).

(*q*) See *Toms* v. *Cuming* (1845), 8 Scott (N. R.), 910. Where the surname of the objector, being in his usual mode of signing, was not legible by an ordinary person, though such person might have understood it by comparison of the notice of objection with the entry in the register, the notice was held sufficient (*Trotter* v. *Walker* (*Aylan's Case*) (1862), 13 C. B. (N. S.) 30). The notice, though posted

clerk (*r*) of any post office where money orders are received or paid, within such hours (*s*) as have previously been given notice of (*t*), and under such regulations with respect to the registration of such letters and the fee for such registration (*a*) as are from time to time made by the Postmaster-General (*b*).

In all cases in which the fee has been duly paid the postmaster or his managing clerk (*c*) must compare the notice and the duplicate, and on being satisfied that they are alike in their address and in their contents (*d*), must forward one of them to its address by post and must return the other to the person bringing it, duly stamped with the post office stamp (*e*).

The production by the person who posted the notice of the stamped duplicate (*f*) will be evidence of the notice having been given to the person at the place mentioned in the duplicate on the day on which the notice would in the ordinary course of post (*g*) have been delivered.

If no abode of the person objected to is described in the list, or if the abode is out of the United Kingdom, then it is sufficient if notice is given to the overseers (and in the case of ownership

by an agent, may be produced by the objector (*Cuming* v. *Toms* (1844), 7 Man. & G. 29).

(*r*) *Allan* v. *Waterhouse* (1844), 8 Scott (N. R.), 68.

(*s*) If the postmaster receives it, the fact of the notice being delivered out of the usual hours does not vitiate it (*Hannaford* v. *Whiteway* (1856), 1 C. B. (N. S.) 53).

(*t*) At such post office (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 100.

(*a*) In no case to exceed twopence over and above the ordinary rate of postage (*ibid.*).

(*b*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 100; County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 9; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 40.

(*c*) See *Allan* v. *Waterhouse*, *supra*.

(*d*) A stamped copy of a notice of objection with no external address is not a stamped duplicate within this provision (*Birch* v. *Edwards* (1847), 5 C. B. 45).

(*e*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 100. The word "copy" on the duplicate does not invalidate it (*Benesh* v. *Booth* (1864), 18 C. B. (N. S.) 111).

(*f*) The due signature of the original is proved by the production of the stamped duplicate duly signed (*Lewis* v. *Roberts* (1861), 11 C. B. (N. S.) 23).

(*g*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 100; County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 9; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 40. A notice of objection sent by post so that it would in the ordinary course of post be delivered on a Sunday is nevertheless well served (*Colvill* v. *Lewis* (1846), 2 C. B. 60). It is to be noted that no one appeared for the respondents in this case. Where a notice was posted in sufficient time to reach the party according to the ordinary course of post on the 25th August, it was held that such service was sufficient, notwithstanding that the actual delivery was accidentally delayed until the 27th (*Bishops* v. *Helps* (1845), 2 C. B. 45; followed in *Hickton* v. *Antrobus* (1846), 2 C. B. 82, and in *Hornsby* v. *Robson* (1856), 1 C. B. (N. S.) 63). In *Kemp* v. *Wanklyn*, [1894] 1 Q. B. 583, C. A., notices of objection were posted to soldiers in barracks. By the regulations, letters so addressed are taken from the post office to the barracks by orderlies. The notices were brought on 19th August, when the voters were in camp, but owing to a mistake were not forwarded till the 21st. Except for the mistake the voters would have received them on the 20th. It was held, overruling *Childs*

SECT. 1. **Preparation of the Lists.**

voters to the occupying tenant whose name appears on the list, if any (*h*)) in the case of a county voter, or in the case of a borough voter to the overseers or to the town clerk, or in the case of a liveryman of the City of London to the Secondaries and to the clerk of the company to which the person objected to belongs (*i*).

Withdrawal of objection.

437. An objection may be withdrawn by a notice to that effect in writing in the prescribed form (*k*), signed by the objector and given to the person objected to, and to the town clerk in a borough or the overseers in a county, not less than seven days before the day which is appointed for the holding of the first court of revision of the list to which the objection relates (*l*).

Reviving objection.

438. An objection by a qualified objector may, after his death, be revived by any other person qualified to have made the objection originally by a notice to that effect (*m*), signed by him and given to the person objected to and to the town clerk in a borough or to the overseers in a county at or before the time of the revision of the entry to which the objection relates. A person reviving an objection is deemed to have made the objection originally, and is responsible in respect of it (*n*).

Objection to omission from corrupt practices list.

439. Any person entitled to object to any list of voters for the county or borough may object to the omission of any person from the corrupt and illegal practices list. Such objections must be sent in within the same time and be dealt with in like manner as nearly as circumstances admit as other objections (*o*).

Inclusion in lists.

440. The overseers and town clerks respectively (and in the City of London the Secondary) must include the names of all persons

v. *Cox* (1887), 20 Q. B. D. 290, that the "ordinary course of post" meant the course of post in the district, and as in that course the notices would have been delivered at the barracks on or before the 20th but for the special arrangement, the duplicates were evidence of proper service. Where a voter lived two miles from the nearest post town, and there was no delivery at the place where he lived, it was held that there was not sufficient evidence of service of a notice of objection posted so as to reach the post town on 19th August, it being shown that the voter would not receive it, except by accidental conveyance (*Lewis* v. *Evans* (1874), L. R. 10 C. P. 297).

(*h*) See note (*h*) on p. 205, *ante*.

(*i*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 100; County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 9; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 40.

(*k*) Registration Order, 1895, Scheds. II., III., Form N. There appears to be no separate form for the withdrawal of ownership objections.

(*l*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 27 (1), applied to counties by the Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1 (1), (2), (3) (f); County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4. In *Proudfoot* v. *Barnes* (1866), L. R. 2 C. P. 88, it was held that, notwithstanding a withdrawal, an objection might be insisted on. But it is questionable whether since 1878 this applies to a statutory notice of withdrawal.

(*m*) Registration Order, 1895, Scheds. II., III., Form O.

(*n*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 27 (2); Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1; County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4.

(*o*) Corrupt and Illegal Practices Prevention Act, 1883 (45 & 46 Vict. c. 51), s. 39 (4).

SECT. 1. Preparation of the Lists.

claiming as before mentioned (*p*) in lists according to the prescribed forms (*q*), and must also include the names of all persons objected to in lists according to the prescribed forms (*r*). They must sign each of these lists, and publish them on or before the 25th August. Copies must be made and kept for inspection and sale (*s*).

Lists must also be made and published of persons claiming to be omitted from the corrupt and illegal practices list, if any, and of persons objected to on the ground that they are omitted from those lists (*t*).

Delivery of lists.

441. On or before the 25th August the overseers must deliver the lists to the clerk of the county council in counties and to the town clerk in boroughs (*a*). The lists will be as follows :—

In counties only—the list of ownership claimants; the copy of the ownership portion of the register with their marginal additions.

In counties and boroughs—two copies of the occupiers and old lodger lists; a copy of each of the ownership, occupiers, and lodgers objection and claim lists, and the parochial electors claim list (*b*); two copies of the non-resident list; a copy of each of the lists of claims and objections in respect of the corrupt practices list (*c*).

SECT. 2.—*Revising Barristers.*

SUB-SECT. 1.—*Appointment.*

Appointment of revising barrister.

442. Revising barristers are annually (*d*) appointed to revise the lists of voters in every part of the United Kingdom. The number may be varied by Order in Council (*e*).

(*p*) The ownership claimants list is made up on or before 31st July; see p. 201, *ante*.

(*q*) Registration Order, 1895, Occupation, Scheds. II., III., Form K, The form for freemen is Sched. B, Form No. 9, of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), and for freemen of the City of London, *ibid.*, Sched. C, Form No. 3 (to be fixed in the Guildhall and Royal Exchange).

(*r*) Registration Order, 1895, Ownership, Sched. I., Form No. 6; Occupation, Scheds. II., III., Form L. The form for freemen is Sched. B, Form No. 13, of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), and for freemen of the City of London, *ibid.*, Sched. C, Form No. 6 (to be fixed in the Guildhall and Royal Exchange).

(*s*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 8, 15, 18; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1.

(*t*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 39 (3); Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 24.

(*a*) In a municipal borough in a parliamentary county, to both (Registration Act, 1885 (48 & 49 Vict. 15), s. 6 (2) (c); County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4 (1) (a)).

(*b*) There is apparently no special section in any Act of Parliament casting upon the overseers the duty of preparing a separate parochial list. Coverture is no disqualification to the parochial franchise (see p. 191, *ante*), but there is no decision as to whether married women entitled to such franchise must reclaim afresh every year.

(*c*) Registration Order, 1895, Sched. I., Part II., 25, 26; Sched. II., Part II., 45, 46; Sched. III., Part II., 44; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 3 (2); County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4.

(*d*) The appointment is for the year of appointment only, but in practice the same barristers are reappointed.

(*e*) Revising Barristers Act, 1873 (36 & 37 Vict. c. 70), s. 3. The present number is 97 (Order in Council, August, 1890).

SECT. 2. Revising Barristers.

The Lord Chief Justice, in the month of July or August, appoints barristers to revise the lists of voters for that year for the County of Middlesex, the City of London, and the several boroughs in Middlesex (*f*).

The senior judge named in the commission of assize for the counties within any circuit, who actually travels that circuit or any part thereof during the summer circuit, or such other judge (if any) as may be arranged by the judges going the summer circuit, is the judge having power to appoint the revising barristers for that year within the circuit (*g*).

Where a parliamentary borough is situated partly in one circuit and partly in another, the judge of the circuit in which the greater part is situate makes the appointment for the borough (*h*). For the purposes of revision, Birmingham is deemed part of the Midland Circuit (*i*).

Such part of the county of London as is south of the Thames is deemed a separate county forming part of the South-Eastern Circuit. Such part of the administrative county of London as is north of the Thames is deemed to form part of the county of Middlesex (*k*).

Qualification.

443. A revising barrister must be a barrister of at least seven years' standing (*l*). He must not be a member of Parliament or hold any office or place of profit under the Crown, except the office

(*f*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 28.

(*g*) Revising Barristers Act, 1886 (49 & 50 Vict. c. 42), s. 1 (1). Where a commissioner was appointed to travel the whole circuit, it did not appear that any person was qualified to make the appointments. Lord ALVERSTONE, C.J., therefore, travelled expressly to one town to qualify himself to make the appointments. When a judge makes the appointments, he must make them for all the counties and boroughs for which he has power of appointment (*ibid.*, s. 2 (4)). If a judge, before he has appointed all or any of the barristers, dies or becomes unable to appoint them, the senior judge named in the commission who actually travels the remainder of the circuit will be the judge with the power of appointment, so far as appointments have not been made (*ibid.*, s. 1 (2)).

(*h*) Parliamentary Electors Registration Act, 1868 (31 & 32 Vict. c. 58), s. 25.

(*i*) Subject to any alteration of circuits made hereafter (Revising Barristers Act, 1886 (49 & 50 Vict. c. 42), s. 1 (3)). By the same sub-section Surrey was to be deemed a circuit. By s. 76 (4) of the Local Government Act, 1888 (51 & 52 Vict. c. 41), Surrey was to be deemed part of the South-Eastern Circuit, and on 1st October, 1893, it became part of the South-Eastern Circuit by Order in Council, 28th July, 1893, made under s. 23 of the Judicature Act, 1875 (38 & 39 Vict. c. 77).

(*k*) And the county of Middlesex inclusive of that portion is to be deemed a separate county on a circuit, but any sum payable by the London County Council in respect of either of the portions of the county is to be paid for a general county purpose (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 76 (4)).

(*l*) Every revising barrister is paid the sum of 250 guineas as remuneration and in satisfaction of his expenses. After the termination of his last sitting he must forward his appointment to the Treasury, who will make an order for payment. The sums so paid are payable, half by the Imperial Exchequer and half by the county authorities (County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 9. By this section the county authority is annually to pay into the Exchequer such sum as the Treasury certify to be half the cost of the payment of revising barristers. The Treasury must ascertain the cost of all the revising barristers on any circuit, and must divide half the cost among the counties in the circuit in proportion to the number of burgesses and county electors in each county, and must certify the amount due from each county. The Treasury may vary the certificate, but unless this is done it is final).

of recorder of a city or borough (*m*), including a borough for which he acts as revising barrister (*n*), or the appointment of election commissioner (*o*).

Deputy revising barristers.

444. If it appears to the Lord Chief Justice, or to the judge who has appointed any revising barrister, that from death, illness, absence, or other cause the list cannot be revised within the period directed, he must appoint one or more properly qualified barristers to act in the place of or in addition to the barrister in question (*p*). The deputy's remuneration is such an amount paid out of the sum otherwise payable to the barrister originally appointed as seems reasonable to the judge making the appointment (*q*).

Additional revising barristers.

445. If at any time after the 1st September (*r*) it appears to a principal Secretary of State that the number of revising barristers on any circuit is insufficient, he must give notice to any judge of the High Court then sitting in chambers. The judge must appoint such number of duly qualified barristers as are specified in the notice to act in addition to those originally appointed for the circuit. They will have all the powers of originally appointed barristers (*a*).

Notification of appointment.

446. The revising barrister must in due course notify his appointment to the clerk of the county council of every county and to the town clerk of every borough for which he is appointed (*b*).

Abstracts to be sent to revising barrister.

447. Each clerk of a county council must as soon as possible send an abstract of the number of persons objected to by the overseers and by other persons in each parish in the county, and the town clerk of every borough must send an abstract of the lists of claimants and the lists of persons objected to in each parish in the borough to the revising barrister, in order that proper time and places for holding the courts may be appointed (*c*).

SUB-SECT. 2.—*The Court.*

Notice of times and places of courts.

448. The revising barrister must, seven (*d*) days at least before the holding of his first court, give notice to the clerk of the county

(*m*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 28.

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 163 (6). A revising barrister is not eligible to sit in Parliament for any county or borough for which he acts for eighteen months from the time of his appointment (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 28).

(*o*) Under the Election Commissioners Act, 1852 (15 & 16 Vict. c. 57); Revising Barristers Act, 1866 (29 & 30 Vict. c. 54), s. 1.

(*p*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 29.

(*q*) Revising Barristers Act, 1874 (37 & 38 Vict. c. 53), s. 1. Every revising barrister must state, in forwarding his appointment, whether any other barrister has been appointed in his place (*ibid.*).

(*r*) Altered from the 5th (County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 10 (3)).

(*a*) Revising Barristers Act, 1886 (49 & 50 Vict. c. 42), s. 2. Their remuneration is five guineas for every day that they are respectively employed, and three guineas a day for expenses, but the maximum amount paid must not exceed the amount authorised to be paid to a revising barrister (County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 9).

(*b*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 31.

(*c*) *Ibid.* It is to be observed that there is no provision in the section for an abstract of the list of claimants in counties. It appears that in practice a schedule of the number of claimants is sent.

(*d*) Altered from ten days (Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (1)).

SECT. 2. Revising Barristers.

council in a county, or to the town clerk in a borough, of the times and places at which the courts will be held, and of the parishes whose lists will be revised at each court (*e*). The officer concerned must give public notice of the times and places (*f*).

Where courts to be held.

449. The revising barrister must hold open courts at all the polling places in the county (*g*) named by the county council (*h*), and at any other places within the county which he thinks expedient (*i*).

Where it appears that, for the convenience of the voters in some polling district, it is expedient to direct the holding of a court in a town near the polling district, although outside the boundary of the county, the county council may so direct (*k*).

Open courts must also be held in boroughs (*l*). If the barrister, in his discretion, deems it expedient to hold his court at different times and places in the borough, he must give notice of the times and places to the town clerk, who will publish a notice accordingly (*m*).

When courts to be held.

450. The courts must be held between the 8th September and the 12th October, both inclusive, and as soon as possible after the 7th September (*n*). In a county the revising barrister must, if practicable, complete the revision of the lists for one polling district and send them to the clerk of the county council before revising the lists for another polling district (*o*). The hour of holding the courts is in the revising barrister's discretion (*p*),

Evening sittings.

except that in certain places he is bound to hold at least one evening sitting, commencing not earlier than 6 p.m. nor later than 7 p.m., and of such duration as he may think reasonable (*q*). This obligation prevails in any borough containing, according to the last census, more than 10,000 inhabitants (*r*), and at any place in any county at which the revising barrister is required to hold a court, and which is an urban sanitary district containing, according to the census, more than 10,000 inhabitants (*s*). Special

(*e*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 32, 33.

(*f*) *Ibid.* By s. 32 the clerk of a county council must give notice by advertisement in one or more newspapers circulating in the county, and must send a copy of the notice to the overseers of every parish, requiring them to publish it and to attend at the court therein appointed. By s. 33 a town clerk must publish a notice on the town hall, and on every church or chapel, or, if there be no church, chapel, or town hall, in some public and conspicuous place in the borough.

(*g*) For the authority charged with the division of the county into polling districts, see p. 308, *post*. For explanation of polling places, see p. 309, *post*.

(*h*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 34.

(*i*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 32.

(*k*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (4).

(*l*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 33.

(*m*) *Ibid.*

(*n*) County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 6 (1). There appears to be no provision as to what is to be the result if the revision is not completed within the statutory time. But the High Court has jurisdiction to order the revising barrister to hold a court after 12th October when necessary (*Kent* v. *Fittall* (No. 2), [1908] 2 K. B. 933, C. A.).

(*o*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (6).

(*p*) On this point see *R.* v. *Soden*, [1896] 1 Q. B. 634, C. A.; *R.* v. *Soden*, [1897] 1 Q. B. 188.

(*q*) Revising Barristers Act, 1873 (36 & 37 Vict. c. 70), s. 4

(*r*) *Ibid.*

(*s*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (3). It happens in

notice of evening sittings must be published by the clerk of the county council or the town clerk in such manner as the revising barrister may direct (*t*).

Adjournment

451. If a revising barrister is prevented by illness from holding a court at any place at the appointed time, he may, by notice in writing addressed to the clerk of the county council or the town clerk, adjourn the court to some other day named in the notice. The officer concerned must give public notice of the adjournment (*a*).

The revising barrister, when holding a court, has power to adjourn it from time to time, and from place to place, within the same county or the same borough, provided that no court is held after the 12th October (*b*). A formal adjournment is not necessary (*c*).

Lists to be delivered.

452. In counties the clerk of the county council must, at the opening of the first court held in and for the county, deliver, or cause to be delivered, to the revising barrister all the lists of voters for the year and the lists of persons objected to, and also one or more printed copies of the register for the county. The overseers of every parish must attend the court held for the revision of the lists for their parish, and must deliver to the revising barrister the original notices of claim and objection (*d*), the occupiers and old lodger lists and the non-resident list; the occupiers and lodgers objection and claim lists, and the parochial electors claim lists made out and signed by them; also all notices of the withdrawal or revival of objections received by them (*e*).

In boroughs the town clerk and the overseers of any parish, and in the City of London the Secondary and the clerks of the livery companies, must attend the first court, unless they have been respectively required by notice to attend at some other court. They must deliver to the barrister the several lists made by them respectively and also the original notices of claim and objection (*f*).

Evidence and production of documents.

453. All the officers named must, if required, answer upon oath all such questions as the revising barrister may put to them, and must produce all documents, papers and writings in their possession, custody, or power concerning any necessary matter (*g*).

The overseers must produce to the revising barrister (*h*) all poor

practice that in many such places there is no business to be transacted at the evening sitting, but the revising barrister must formally sit within the prescribed hours.

(*t*) Revising Barristers Act, 1873 (36 & 37 Vict. c. 70), s. 4; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (3).

(*a*) Revising Barristers Act, 1873 (36 & 37 Vict. c. 70), s. 5.

(*b*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 41; Revising Barristers Act, 1873 (36 & 37 Vict. c. 70), s. 5; County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 6 (1).

(*c*) Revising Barristers Act, 1873 (36 & 37 Vict. c. 70), s. 5.

(*d*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 34.

(*e*) Registration Order, 1875, Sched. II., Instruction 47.

(*f*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 35.

(*g*) *Ibid.*, ss. 34, 35.

(*h*) In the case of counties, at the court for the revision of their parish lists (Parliamentary Electors Registration Act, 1868 (31 & 32 Vict. c. 58), s. 28). In boroughs at the first court (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 35.

SECT 2. Revising Barristers.

rates made for their parish between the 5th January in the last past year and the 31st July in the current year (*i*).

The revising barrister may require the attendance of any overseers of a past year, or other person having the custody of any poor rate of the current or past year, or any relieving officer (*k*).

He may also, by summons, require any person to attend at the court and give evidence or produce documents for the purpose of the revision (*l*).

All persons, whether claiming or objecting or objected to, and all persons whatsoever, may be examined on oath (*m*) concerning relevant matters.

Preserving order in court.

454. The revising barrister may order any person to be removed from his court who interrupts the business or refuses to obey his lawful orders. The chief constable must take care that a police officer attend the court during the sitting to keep order and to carry into effect any directions of the revising barrister (*n*).

Counsel cannot be heard.

455. At the holding of the courts no party or other person may appear or be attended by counsel (*o*), even though the latter appear without fee (*p*). A political association is a "party" within the provision (*q*).

Regulation of business.

456. The revising barrister has an inherent right to make rules for the regulation of the business of his court, including the power to limit the time during which contentious business will be taken (*r*).

SUB-SECT. 3.—*The Actual Work of Revision.*

Duty of revising barrister.

457. The duty of the revising barrister is to consider the different lists (*s*) and to revise them by giving effect, according to his judgment,

(*i*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 35 ; Parliamentary Electors Registration Act, 1868 (31 & 32 Vict. c. 58), s. 28.

(*k*) Or in the City of London the chamberlain or his deputy (Parliamentary Electors Registration Act, 1868 (31 & 32 Vict. c. 58), s. 29; Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 35).

(*l*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 36 ; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1. The summons is served by the police officer in attendance under the County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 16.

(*m*) To be administered by the barrister. False swearing is, under the Act, deemed to be perjury (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 41).

(*n*) County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 16. In *Willis* v. *Maclachlan* (1876), 1 Ex. D. 376, where a person who was ordered out of court by a revising barrister for alleged misconduct to a voter in a previous year was non-suited in a county court action for wrongful expulsion, it was held that the non-suit was wrong, the offender not having interrupted on the occasion in question. In the course of the argument BRAMWELL, B., said, at p. 381 : "I incline to think that the County Voters Registration Act, 1865, confers no additional jurisdiction upon revising barristers whilst they are holding their courts ; the only effect of the enactment seems to be to provide an officer of police to assist them in maintaining their authority."

(*o*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 41.

(*p*) *O'Connor* v. *Nicholson* (1891), Fox & S. Reg. 250.

(*q*) *Ibid.*

(*r*) *R.* v. *Soden*, [1897] 1 Q. B. 188.

(*s*) Including (1) the separate lists of parochial electors, being lists of persons entitled to vote as parochial electors only in respect of the ownership of property

to all regular claims and objections, by correcting mistakes and by removing duplicates in the manner to be described (*t*). He is under an obligation throughout his work to consider the admissibility of evidence whenever it is raised before him. He must not accept gossip or hearsay evidence (*w*). To this there is one exception, to be mentioned later (*x*). For a particular purpose, to be explained in the proper place (*y*), he may receive something which is not evidence; but that is the exception which proves the rule (*z*).

Correction of mistakes.

458. He must correct any mistake which is proved to him to have been made in any list (*u*). But this is subject to the following modification (*a*). Where the matter stated in a list (or proved to the revising barrister in relation to any alleged right to be on any list) is, in his judgment, insufficient in law to constitute a qualification of the nature or description stated, but sufficient in law to constitute a qualification of some other nature or description, the revising barrister must, if the name is entered in a list for which such true qualification in law is appropriate, correct the entry by inserting such qualification accordingly, and, in any other case, must insert the name, with such qualification, in the appropriate list, and must expunge it from the other list, if any, in which it is entered (*b*).

Whether any person is objected to or not, no evidence is to be given of any other qualification than that which is described in the list, nor is the revising barrister at liberty to change the description of the qualification (*c*) as it appears in the list, except for the purpose of more clearly and accurately defining the same (*d*). The revising

within the particular parish; (2) the lists of ownership claimants, being lists of persons claiming to be entitled to have their names entered in the separate parochial electors list in respect of the ownership of property within the particular parish; and (3) lists of claimants (parochial electors list), being lists of persons claiming, as parochial electors only, to have their names entered in the separate parochial electors list in respect of the occupation of property within the particular parish (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 44; and Registration Order, 1895, interpreted by *R.* v. *Nash*, [1900] 1 Q. B. 103).

(*t*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28. Applied to counties by County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4.

(*u*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (1). It is to be observed that the power is mandatory, in contradistinction to the permissive power in respect to claims and objections. The revising barrister is bound by the ordinary rules as to the legal admissibility of evidence (*Storey* v. *Bermondsey* (*Town Clerk*), [1910] 1 K. B. 203, C. A.).

(*w*) *Storey* v. *Bermondsey* (*Town Clerk*), *supra*, *per* VAUGHAN WILLIAMS, L.J., at p. 210.

(*x*) See p. 231, *post*.

(*y*) *Ibid.*

(*z*) *Storey* v. *Bermondsey* (*Town Clerk*), *supra*, *per* BUCKLEY, L.J., at p. 213.

(*a*) Since sub-ss. 1, 12, and 13 have to be read together, see note (*e*), p. 225, *post*.

(*b*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (12).

(*c*) Compare *Reade* v. *Richards and Gardom* (1899), 63 J. P. 759.

(*d*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (13). As to what is a sufficient description in a list, see *Birks* v. *Allison* (1862), 13 C. B. (N. S.) 12, where "tenant" was held to be sufficient description of the qualification of one occupying a farm of sufficient value to confer the franchise. Where, in a list of claimants for a county, the claimant's qualification was

SECT. 2. Revising Barristers.

barrister has therefore power to amend an inaccurate or insufficient description of a qualification, but cannot alter the description into a description of another qualification (*e*).

described as "£50 occupier," and in the fourth column the property was described as "Cambridge Road," the description was held sufficient (*Howitt* v. *Stephens* (1858), 5 C. B. (N. S.) 30. But in *Burton* v. *Gery* (1847), 5 C. B. 7, it was held that one who was on the register as entitled to vote for a county in respect of an occupation of land above £50 a year, but who ceased to occupy the same land and entered upon the occupation of other land within the twelve months next preceding July 31st, did not "retain the same qualification as described in such register" within 6 & 7 Vict. c. 18, s. 4, although the description in the register was general and sufficiently large to embrace either occupation. In *Daniel* v. *Coulsting* (1845), 7 Man. & G. 122, a building calculated to be used as a dwelling-house, though not used as such, was held properly described as a "house." In *Daniel* v. *Camplin* (1845), 7 Man. & G. 167, it was decided that in a case of joint occupation of a house it is not necessary that such joint occupation should be stated in the list provided the value of the house is sufficient to qualify each occupier. TINDAL, C.J., said: "The principle of *Bartlett* v. *Gibbs* (1843), 5 Man. & G. 81 (see p. 225, *post*), is not applicable here"; and MAULE, J., said: "In that case there was a total absence of any statement as to the position of the premises occupied during the time required by the Act. The list, as made out, left an objecting party in the dark, or rather misled him as to what the premises were which formed the qualification of the voter. In that respect there was an unreasonable want of information. . . . In the present case, though the insertion of the statement suggested would afford some convenience, I think the balance of inconvenience is the other way." *Quære*, whether "house" sufficiently describes qualification created by the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3 (*Friend* v. *Towers* (1882), Colt. 310). "Leasehold house and garden" is a sufficient description of a lease for life of a house and garden (*Jones* v. *Jones* (1868), L. R. 4 C. P. 422). In *Townshend* v. *St. Marylebone Overseers* (1871), L. R. 7 C. P. 143, where a voter's qualification was described as "dwelling-house," and he proved such joint occupation of a dwelling-house as amounted to a qualification in respect of a "house" under the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), ss. 27, 29, it was held that amendment was unnecessary (followed in *Bagley* v. *Butcher*, [1898] 1 Q. B. 67, where the description was "dwelling-house joint"). Where the voter was described in column 2 (place of abode) as "travelling abroad," it was held sufficient description (if in accordance with fact) under s. 40 of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18) (repealed) (*Walker* v. *Payne* (1845), 2 C. B. 12). It is a question for the revising barrister whether the property described in the register for a county is sufficiently described for the purpose of being identified (*Wood* v. *Willesden Overseers* (1845), 2 C. B. 15). Also see as to sufficiency of description, *Eckersley* v. *Barker* (1845), 7 Man. & G. 76; *Judson* v. *Luckett* (1846), 2 C. B. 197; *Cooper* v. *Ashfield* (1858), 5 C. B. (N. S.) 16; *Sherwin* v. *Whyman* (1873), L. R. 9 C. P. 243. A voter was entitled to be registered as a £12 occupier (now £10), and was so included in the list. By a printer's error the sheet on which his name appeared was headed "list of persons entitled to vote in respect of property" (this description being applicable to the preceding list); there was no evidence that anyone was misled. It was held a sufficient publication of this part of the list as a £12 list (*Mather* v. *Allendale Overseers* (1870), L. R. 6 C. P. 272). See also *Ballard* v. *Robins* (1877), 3 C. P. D. 92.

(*e*) *Plant* v. *Potts*, [1891] 1 Q. B. 256, C. A., *per* Lord ESHER, M.R., at p. 262. As to the revising barrister's power of amendment, s. 40 of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 11), in which his powers were defined, has been repealed and replaced by the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28, but the law does not appear to have been altered materially, though some doubt existed as to the reference of the words "except as herein provided" in sub-s. 13. *Foskett* v. *Kaufman* (1885), 16 Q. B. D. 279, C. A., seems to have settled that the law is substantially as before with the addition of the power of making a declaration under s. 24. In *Foskett* v. *Kaufman*, *supra*, the nature of the proposed voter's

But where a person, other than an ownership voter, has made

qualification appeared on the list as "dwelling-house," and the name of the qualifying property was described as 5, Victoria Cottages. He had in fact occupied two dwelling-houses in succession during the period of qualification—High Street, Wapping, and 5, Victoria Cottages. It was held that the power of amendment given by sub-s. 1 of s. 28 of the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26) (enacting that the barrister shall correct any mistake proved to him to have been made in a list), is limited by sub-s. 13 except when a declaration had been made under s. 24. But see the Irish case, *M'Laughlin* v. *Swan*, [1909] 2 I. R. 48, C. A. In *Plant* v. *Potts*, *supra*, it was held that the barrister has no power to amend the description of the nature of the qualification in the third column by altering "freehold house" to "leasehold house." VAUGHAN WILLIAMS, J., said, at p. 259: "We should be following *Foskett* v. *Kaufman*, *supra*, if we were to hold that the power of amendment under sub-s. 12 is subject to the limitation which the Court of Appeal then held applied under sub-s. 1, and that the power therefore can only be exercised under sub-s. 12 in cases in which there has been a declaration pursuant to s. 24." Lord ESHER, M.R., said, at p. 261: "In *Foskett* v. *Kaufman*, *supra*, as I understand that decision, it was held that in a case like the present if sub-s. 12 stood alone without any limitation being placed upon the powers there given that sub-section would have given the revising barrister power to make the alteration now contended for; but that sub-ss. 12 and 13 must be read together, and that sub-s. 13 was a proviso by way of exception on sub-s. 12; that therefore the effect of reading the two sub-sections together was that although the revising barrister might by virtue of sub-s. 12 have the power to amend an inaccurate or insufficient description of the qualification as described in the third column, yet, if the description in that column did sufficiently and accurately describe a qualification known to the law, then by virtue of the proviso the revising barrister would have no power to alter that sufficient description into a sufficient description of another qualification; in other words, a revising barrister can only amend an insufficient description of the qualification, but cannot alter the description into a description of another qualification." The earlier cases seem, therefore, to be in point, as well as the later.

In *Bartlett* v. *Gibbs* (1843), 5 Man. & G. 81, where in the case of a successive occupation only the premises occupied at the time of the making of the list were inserted, it was held that the revising barrister had no power to amend (followed in *Onions* v. *Bowdler* (1847), 5 C. B. 65); see also *Nicholls* v. *Bulwer* (1870), L. R. 6 C. P. 281. In the following cases it was held that the revising barrister had power to amend: Where the voter's place of abode was untruly stated on the list (*Luckett* v. *Knowles* (1845), 2 C. B. 187); a wrong street number of a house in the description of the qualifying property (*Bendle* v. *Watson* (1871), L. R. 7 C. P. 163); where the qualification was described as "house" in the third column and the voter had in fact occupied a dwelling-house under the value of £10 clear yearly value (*Friend* v. *Towers* (1882), Colt. 310); where in the case of a successive occupation the descriptions of only two houses instead of three actually occupied were given (*Ford* v. *Hoar* (1884), 14 Q. B. D. 507. But on this case and *Lynch* v. *Wheatley* (1884), 14 Q. B. D. 504, see *Foskett* v. *Kaufman*, *supra*). The principle seems to be that, if from reading both columns together it is clear that succession was intended to be claimed, column 3 only can be amended; but if from reading both together it is clear that succession was not intended to be claimed, column 3 cannot be amended in the absence of a "declaration."

In *Minifie* v. *Banger* (1885), 16 Q. B. D. 302, C. A., the nature of the qualification (of less annual value than £10) was described as "tenement and garden," and the qualifying property as "School-yard." The qualification of thirty-three other voters was so described. The qualifying property in two of the cases was described as "School-yard," in five as "Cat Lane," in three as "High Street," and in five as "Bridge." It was held that taking all the cases together the revising barrister might consider that "tenement and garden" was intended to describe "dwelling-house," and that he had power to strike out the words "and garden" and insert "dwelling-house" before "tenement." Similarly *Dashwood* v. *Ayles* (1885), 16 Q. B. D. 295, C. A. Amendment may also be made in the

SECT. 2. Revising Barristers.

the declaration previously mentioned (*f*) as to the incorrect statement of the nature of his qualification or as to any other error or omission in a list, any alteration required by such declaration may be made (*g*). The declaration, however, must have been sent to the town clerk or the clerk of the peace within the statutory time (*h*), and the revising barrister may admit evidence contradicting a declaration of misdescription (*i*). In the case of an ownership voter where, having discovered that there is a mistake in the description of his qualification, he has sent in a fresh claim with the right qualification, the necessary alteration must be made (*k*).

case of incorrect description of voter's place of abode if the result of a mistake and given *bonâ fide* (*Soutter* v. *Roderick* (*Barker's Case*) (1895), 1 Smith, Reg. Cas. 36; followed in *Green* v. *Wanklyn*, [1906] 1 K. B. 394 (amendment of omission of one of voter's christian names)). Also where in a claim to be on the old lodgers list the name of the parliamentary borough is omitted (claimant stating in his declaration that he was on the register for the "said parliamentary borough") (*Treadgold* v. *Grantham* (*Town Clerk*), [1895] 1 Q. B. 163). In *Soutter* v. *Roderick*, [1896] 1 Q. B. 91, where one who claimed to be on the list of occupiers described the nature of his qualification as "dwelling-house" and the qualifying property in column 4 as "69, Richmond Road, Stamford Hill; 3, Hamilton Square," and it was proved that the claimant had occupied the two houses in immediate succession for the qualifying period, it was held that, under the Registration Order, 1895, Sched. II., Part I., 19 (i) (b), the qualification should have been stated as "dwelling-house (successive)," but that the barrister had power under the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (13), to make such change in the description of the claim as might "be necessary for the purpose of more clearly and accurately defining the same." VAUGHAN WILLIAMS, J., at p. 98, in this case dissented from the proposition that where the description of the claim is equally applicable to one qualification as to another, the revising barrister has power to amend or ought to amend. Other cases as to amendment are *Birks* v. *Allison* (1862), 13 C. B. (N. S.) 12; *Howitt* v. *Stephens* (1858), 5 C. B. (N. S.) 30; *Cooper* v. *Ashfield* (1858), 5 C. B. (N. S.) 16; *Elliot* v. *S. Mary Within, Carlisle Overseers* (1847), 4 C. B. 76; *Smith* v. *Woolston* (1878), 4 C. P. D. 73; *Nagle* v. *Campbell*, [1896] 2 I. R. 326, C. A.

(*f*) P. 208, *ante*.

(*g*) Under the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 24, not applicable to ownership voters (Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1 (2)). See *Goodrich* v. *Great Grimsby* (*Town Clerk*), [1902] 1 K. B. 301, dissenting from *Lord* v. *Fox*, [1892] 1 Q. B. 199. Lord ALVERSTONE, C.J., in *Goodrich* v. *Great Grimsby* (*Town Clerk*), *supra*, said, at p. 304: "If *Lord* v. *Fox* is an authority against anything that I am now saying, I can only say that it is inconsistent with the view taken by the Court of Appeal in *Foskett* v. *Kaufman*. But it is important to observe that in *Lord* v. *Fox* the point as to the effect of the declaration was not brought prominently to the attention of the court."

(*h*) *Daking* v. *Fraser* (1885), 16 Q. B. D. 252.

(*i*) *Tranior* v. *Starbuck* (1893), Fox & S. Reg. 340.

(*k*) Under the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 4, see p. 206, *ante*. In *Plant* v. *Potts*, [1891] 1 Q. B. 256, C. A., Lord ESHER, M.R., said, at p. 263, after pointing out that s. 24 is not to be read into the Registration Act, 1885: "How then are we to read sub-ss. 12, 13 of the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28, into the Act of 1885? Beginning with sub-s. 12 it will be read in exactly the same manner as in the former Act as giving certain powers of amendment; but sub-s. 13 is introduced by the words 'except as herein provided,' which, reading the subsection as written into the Act of 1885, mean except as provided in the Act of 1885. I think that s. 24 is neither directly nor indirectly brought into the Act of 1885 for the purpose of the revision of the ownership lists. . . . It is possible, however, that sub-s. 13 may be applicable to the revision of the

Mistakes in claims.

459. The revising barrister may correct any mistake which is proved to him to have been made in any claim (*l*). It is to be noted that in the case of claims the power is permissive and discretionary; and also that it is limited, as is the power to amend the lists by the proviso that any correction made must not change the description of the qualification (*l*).

ownership lists in the following way. The Registration Acts passed before 1885 are to be read with the Act of 1885 except where it is obvious that they are not to be so read, and therefore there is to be read into the later Act the provision in the Act of 1843, giving power to a voter who is upon the register, or who has sent in a claim to the overseers and who discovers before it is too late that there is a mistake in the description of his qualification, to send in a fresh claim with the right qualification. In such a case both claims are before the revising barrister, who does not alter the description, but strikes out the bad claim and retains the good. This is the only interpretation which I am able to give to sub-s. 13, it either has no meaning or it applies to the making of an entirely new claim under such circumstances as I have suggested."

(*l*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (2). There is no misdescription in a claim by joint occupiers when one of them is already on the list in respect of the same premises (*Druitt* v. *Gossling* (1888), 58 L. J. (Q. B.) 109). Where overseers have acted on a notice of claim (ownership) by inserting the claimant's name in their list under s. 5 of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), it is not competent to the revising barrister to inquire whether its form is in compliance with the statute (*Davies* v. *Hopkins* (1857), 3 C. B. (N. S.) 376; followed in *Leonard* v. *Alloways* (1878), 2 Hop. & Colt. 411). Where there is an inaccuracy in the description of the qualification, the revising barrister should treat the notice as sufficient provided the mistake or misdescription is such as would have been amendable if in a list of voters (*Eaden* v. *Cooper* (1851), 11 C. B. 18). "House" is sufficient description of an occupier's qualification in a borough where freeholders as well as occupiers have the franchise (*Ford* v. *Boon* (1871), L. R. 7 C. P. 150). WILLES, J., said, at p. 155: "But further after our decision in *Townshend* v. *St. Marylebone Overseers* (1871), L. R. 7 C. P. 143, it must now be taken to be the law that if there be a description of a qualification which is sufficient when the claim to vote is in respect of the annual value of £10, and that description is such as to fall under some other qualification—as for instance, a qualification in respect of a dwelling-house under the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), the person who makes the claim may prove his qualification in respect of the genus 'house' under s. 27 of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), or in respect of the species 'dwelling-house' under the Representation of the People Act, 1867 (30 & 31 Vict. c. 102). So I should be disposed to go that length here, and hold that where a man claims in respect of a 'house' in a city or borough where there are freehold voters he may sustain that claim by showing either that he occupies a house of the annual value of £10, or that he has a freehold house of sufficient value." In *Hitchins* v. *Brown* (1845), 2 C. B. 25, "house" was held to be sufficient description of the nature of the qualification, if the whole qualification were accurately described in the fourth column. Where a claim purporting to be signed by the claimant was accepted and published by the overseers, and the barrister, though satisfied as to the qualification, was not satisfied that the claim came from the claimant himself, it was held that the barrister was justified in disallowing the claim and refusing to state a case (*Re Sale* (1880), Colt. 152); and see *Flounders* v. *Donner* (1846), 2 C. B. 63; see also *Firth* v. *Widdicombe* (1871), L. R. 7 C. P. 172. It appears that joint occupation need not be stated (*Daniel* v. *Camplin* (1845), 7 Man. & G. 167). As to where the revising barrister may amend, the principle of *Foskett* v. *Kaufman* (1885), 16 Q. B. D. 279, C. A., applies.

In *Hurcum* v. *Hilleary*, [1894] 1 Q. B. 579, C. A., following *Bartlett* v. *Gibbs* (1843), 5 Man. & G. 81, and *Foskett* v. *Kaufman*, *supra*, it was held that where a claimant stated the nature of his qualification as "dwelling-house successive,"

SECT. 2. Revising Barristers.

The revising barrister need not insert in any list of voters for a parish in a county or borough the names of the claimants for that list, but may revise the list of claimants itself in like manner as if it were a list of voters, and sign it as so revised and deliver it to the clerk of the county council or town clerk, who must insert in their proper place the names of persons appearing from the revised list to be entitled to vote (*m*).

Proof of notice of claim.

460. In the case of claimants for the ownership franchise where once the name is on the published list of claimants, proof of due notice of claim is unnecessary (*n*).

In the case of claimants for the occupation franchise it is otherwise. If any person who has given to the overseers due notice of his claim to have his name inserted in the list of occupation voters has been omitted by the overseers from the list, the revising barrister may, upon the revision of the list, insert the name, if it is proved to his satisfaction that such person gave due notice of his claim to the overseers, and that he was entitled on the last 15th July to be inserted in the list (*o*).

In the case of claimants for the lodger franchise, the proof of due notice of claim is an essential part of the qualification, and forms the principal part of the proof of the claim itself (*p*).

Proof of claim.

461. The law as to the burden of proof of claims is also different in the cases of the different kinds of franchise.

Claimants for the ownership franchise whose names appear upon the published lists of claimants need not, in the absence of *primâ*

and in the fourth column described two houses, whereas he had only lived in one during the whole qualifying period, the revising barrister had no power to amend. In *Flounders* v. *Donner* (1846), 2 C. B. 63, it was held that in a successive occupation the street numbers of both houses must be stated; but *semble*, the barrister has power to amend. And in the case of a similar omission, where the number was supplied to the satisfaction of the revising barrister, it was held that he might amend (*Barlow* v. *Mumford* (1886), L. R. 2 C. P. 81); and see *Kitchen* v. *Johnson*, [1899] 1 Q. B. 95. As to lodger claim amendments, the omissions of a lodger claimant to state the amount of rent paid and the address of his landlord are not mistakes in a list but in a claim within sub-s. 2 of s. 28 of the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), and the barrister's power to amend is discretionary (*Pickard* v. *Baylis* (1879), 5 C. P. D. 235). The barrister may correct the omission of one claiming as sole tenant of lodgings to strike out the words ["or as joint tenant"] in the form (*Ainsley* v. *Nicholson* (1889), 24 Q. B. D. 144). And where a claimant stated that he had occupied lodgings partly as sole and partly as joint tenant, it was held an amendable mistake (*R.* v. *McKellar*, [1893] 1 Q. B. 121). The barrister may correct an old lodger's omission to state that he is on the register for the parliamentary borough in respect of the same lodgings and desires to have his name inserted in the old lodger lists (*Francis* v. *Metcalfe* (1896), 75 L. T. 380). Other cases on amendments are *Nicholls* v. *Bulwer* (1870), L. R. 6 C. P. 281; *Treadgold* v. *Grantham* (*Town Clerk*) (1894), 64 L. J. (Q. B.) 29; *Soutter* v. *Roderick*, [1896] 1 Q. B. 91; *Ford* v. *Boon* (1871), L. R. 7 C. P. 150; *Hitchins* v. *Brown* (1845), 2 C. B. 25; see also *Smith* v. *Chandler* (1888), 22 Q. B. D. 208.

(*m*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (5).

(*n*) *Leonard* v. *Alloways* (1878), 2 Hop. & Colt. 411; confirming *Davies* v. *Hopkins* (1857), 3 C. B. (N. S.) 376. See p. 205, *ante*.

(*o*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 37, 38. The barrister should revise the lists of occupier and lodger claims, although published late by the overseers (*Wells* v. *Stanforth* (1885), 16 Q. B. D. 244).

(*p*) See *Hersant* v. *Halse* (1886), 18 Q. B. D. 412, and *infra*.

facie evidence of an objection, prove their claims at all (*q*), because that published list, together with the copy of last year's register, with the overseers' marginal additions, is deemed to be the list of voters of the parish or township under consideration (*r*).

Claimants for any of the occupation franchises must prove not only that they gave due notice of their claims, but also that they were entitled on the 15th July last to be inserted in the list of voters (*s*).

Claimants for the lodger franchise must prove their claims; but if they duly prove, whether present in person or not (*t*), that their notices were given, with the prescribed declarations annexed thereto, in such cases the declarations are *primâ facie* evidence of their qualification (*a*). The notices of claim and declarations must be made in due form, and very slight irregularities have sufficed to invalidate the claims (*b*).

Opposition to claims.

462. Any person whose name is on any list of voters may oppose the claim of any person omitted from any list for the same county, city, or borough. Such person intending to oppose any such claim must, in the court held for the revision of the list concerned, and before the hearing of the claim, give notice in writing to the revising barrister of his intention to oppose the claim, and must thereupon be admitted to oppose it, by evidence or otherwise, without any previous or other notice. He will have the same rights, powers, and liabilities as to costs, appeal, and other matters as any person who has duly objected to the name of any other person being retained on any list of voters, and who appears and proves the requisite notices (*c*).

(*q*) *Davies* v. *Hopkins* (1857), 3 C. B. (N. S.) 376.

(*r*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 6.

(*s*) *Ibid.*, ss. 37, 38; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 7. See *Re Sale* (1880), 50 L. J. (Q. B.) 113; *Roulston* v. *Kerlin*, [1908] 2 I. R. 335, C. A.

(*t*) In *Jenkins* v. *Grocott*, [1904] 1 K. B. 374, it was held that the attendance of the claimant in person could not be made by the revising barrister a condition of the claim being allowed.

(*a*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 23. As to evidence, see *Major* v. *Shrewsbury* (*Town Clerk*), [1909] 1 K. B. 348.

(*b*) *Hersant* v. *Halse* (1886), 18 Q. B. D. 412; *Jones* v. *Kent* (1888), 22 Q. B. D. 204; *Smith* v. *Chandler* (1888), 22 Q. B. D. 208; *Body* v. *Halse* (1891), 61 L. J. (Q. B.) 57; *Cullen* v. *Patterson* (1885), 18 L. R. Ir. 274, C. A.; *Hanbidge* v. *Beveridge* (1889), 26 L. R. Ir. 423, C. A.; *Jones* v. *Beveridge* (1886), 20 L. R. Ir. 382, C. A.; *Campbell* v. *Chambers* (1887), 22 L. R. Ir. 460, C. A. The decision in *Davies* v. *Hopkins* (1857), 3 C. B. (N. S.) 376, has no bearing on revision as regards lodger claimants (*per* Lord COLERIDGE, C.J., in *Jones* v. *Kent*, *supra*). In *Smith* v. *Chandler*, *supra*, the revising barrister refused to give effect to the lodger's notice of claim on the ground that the witness had not given the date upon which he had attested the claim, and had in this respect failed to follow the prescribed form in a material particular, and had done this deliberately. The court held that such a deliberate failure to comply with the form in a material particular was fatal to the claim. The revising barrister has, however, full powers of amendment where the error is not deliberate, or where it does not relate to a material particular. See Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28, and p. 227, *ante*.

(*c*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 39;

SECT. 2. Revising Barristers.

Correction of notice of objection.

463. The revising barrister may correct any mistake proved to him to have been made in any notice of objection. The statement, however, of a ground of objection wholly different to the real ground of objection is not a "mistake" within this provision; and it must appear that the mistake has not misled anyone (*d*).

Every separate ground of objection must be treated by the revising barrister as a separate objection (*e*). In cases where the grounds of objection are required to be given (*f*), the person objected to cannot be required to give evidence in support of his right, except in so far as such right is called in question by those grounds (*g*).

Proof in support of objection.

464. If the objector appears the revising barrister must require him, unless he is an overseer (*h*), to prove that he gave the notices

lodger claimants are included by the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 30; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1. The same principle applies to county electors and burgesses (County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4).

(*d*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (2). The sufficiency of the description of the objector's place of abode is a question of fact for the revising barrister, who should, if necessary, hear evidence (*Jones* v. *Pritchard* (1868), L. R. 4 C. P. 414). As to what amendments may be made:—A notice of objection served on a freeman stated as the ground of objection, "That you do not reside at 12, Clifton Street, Norwich." The real ground was that he had not resided for the qualifying period in Norwich or within seven miles thereof. The objection was held bad; and the defect not being a "mistake" within the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (2), there was no power to amend (*Bridges* v. *Miller* (1887), 20 Q. B. D. 287). In the following cases it was held that amendment might be made:—Where an objector omitted to state that he was on the "parliamentary" list (*James* v. *Howarth* (1879), 5 C. P. D. 225). Where an objector described himself as "on the list of parliamentary voters for the parish of Horsham," and omitted to give his place of abode, and the barrister found that no one had been misled (*Adams* v. *Bostock* (1881), 8 Q. B. D. 259). Where a notice of objection (to overseers) was to names in the "Blockhouse list" of voters, "division I.," in the city of Worcester, and there were two distinct franchise lists in the Blockhouse in addition to the list to which the objection referred, but the latter was the only list made out in divisions, it was held that the notice was in substantial compliance with the note to Form I. in the schedule to the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26) (*Bollen* v. *Southall* (1884), 15 Q. B. D. 461, followed in *Hartley* v. *Halse* (1888), 22 Q. B. D. 200). Where the name of the voter's parish was omitted in the notice (*Sandford* v. *Beal* (1895), 65 L. J. (Q. B.) 73). Where an objector misstated his place of abode, no one being misled (*Prescott* v. *Lee*, [1899] 2 Q. B. 273, C. A.). As to proof of objections, see *infra*.

(*e*) County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 8; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 26.

(*f*) *I.e.*, in all cases of objections to occupiers and ownership voters already on the register (County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 6; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 26); see p. 213, *ante*.

(*g*) County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 7; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 26.

(*h*) This exception appears to be intended to refer to the case of an overseer who has put "objected" against a name in the extract of last year's (ownership) register or the lodgers lists. But the words are wider, and it has been contended that an overseer may object without notice to his own (occupation) list, *e.g.*, where he has been deceived into putting a name on such list. There seems to be no authority upon this point, and the practice of revisers has differed.

of objection (*i*) required by law, and to give *primâ facie* proof of the ground of objection (*k*), and for that purpose he may himself examine and allow the objector to examine the overseers, or any other person, on oath, touching the alleged ground of objection, and unless such proof is given to his satisfaction, must (subject to the observance of all other legal requirements) retain the name of the person objected to (*l*).

An objection made in accordance with their statutory powers by overseers is deemed to cast upon the person objected to the burden of proving his right to be on the list (*m*), provided that the overseers appear themselves, or by some one on their behalf (*n*).

The *primâ facie* proof is deemed to be given by the objector if it is shown to the satisfaction of the revising barrister, by evidence, repute, or otherwise (*o*), that there is reasonable ground for believing that the objection is well founded, and that by reason of the person objected to not being present for examination, or for some other reason, the objector is prevented from discovering or proving the truth respecting the entry objected to (*p*).

In *Cartwright* v. *Shrewsbury* (*Town Clerk*), [1909] 2 K. B. 169, JELF, J., said, at p. 182: "With regard to an objection made by an overseer, there are only two conditions to be complied with before the person objected to is called upon to defend his right to be registered—first, the overseer must make an objection, and secondly, he must appear before the revising barrister either by himself, or by some person on his behalf, in support of his objection." But this was in reference to the lodgers list.

(*i*) Which may be done by production of stamped duplicate, as provided by s. 100 of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18); see p. 214, *ante*.

(*k*) *Kent* v. *Fittall* (No. 2), [1908] 2 K. B. 933, C. A. It is not a good ground of objection to a person that another person's name has been retained on the list in respect of the same qualifying premises (*Warren* v. *Maule* (1894), 71 L. T. 731).

(*l*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (10). See *R.* v. *Soden*, [1897] 1 Q. B. 188, and *R.* v. *Soden*, [1896] 1 Q. B. 634, C. A.

(*m*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (10); Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1.

(*n*) *Cartwright* v. *Shrewsbury* (*Town Clerk*), *supra*.

(*o*) In *Douglas* v. *Smith*, [1907] 1 K. B. 126, it was shown where a claimant sought to be registered as an "inhabited occupier"—(1) that the house part of which was said to be separately occupied was itself an ordinary dwelling-house; (2) that the landlord to whom rent was paid resided in the house; (3) and was rated for the house as a separate tenement. It was held that these facts constituted evidence, on which the barrister might decide that there was *primâ facie* proof. But such facts are not of themselves as a matter of law *primâ facie* proof (*R.* v. *Bell*, *Ex parte Kent* (1907), 24 T. L. R. 66 (and see *ibid.* 266), where it was held that the question is entirely for the revising barrister. PHILLIMORE, J., quoting *Douglas* v. *Smith*, *supra*, said: "It is always a question of fact for the revising barrister. If it is a question of fact for the revising barrister, there must be an inquiry into the facts or he must be sufficiently informed to know whether there is sufficient *primâ facie* proof.") The provision as to *primâ facie* proof only applies to the objector and not to the person objected to. It is not competent to the revising barrister to hear evidence of repute to rebut the objection (*Kent* v. *Fittall* (No. 2), *supra*). The evidence on behalf of the person objected to must be strict legal evidence and must relate directly to the particular case (*Kent* v. *Fittall* (No. 3), [1909] 1 K. B. 215).

(*p*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (10); Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1.

SECT. 2. Revising Barristers.

If such proof is given by the objector, or if the objection is by overseers, then, unless the person objected to appears himself, or by some person on his behalf, and establishes by proof at law and not merely by evidence of repute (*q*), that he was entitled on the last 15th July to have his name inserted in the list in respect of the qualification described in it, the revising barrister must expunge the name (*r*).

The revising barrister, if in his opinion the evidence given in support of the objection outweighs the *primâ facie* evidence of the claim given by the declaration of a lodger annexed to his notice of claim, may and should give effect to that opinion and disallow the vote (*a*).

Corrupt practices list.

465. The revising barrister must determine any claims and objections respecting the corrupt practices list, and must revise the list in like manner as nearly as circumstances admit as in the case of other claims and objections and of any list of voters (*b*).

Where it appears to him that a person not named in the corrupt practices list is subject to have his name inserted in it he must (whether or not an objection to the omission has been made), after giving the person an opportunity to show cause to the contrary, insert his name in the list and expunge it from any list of voters (*c*). The revising barrister must determine only whether a person is incapacitated by conviction or by the report of any election court or commissioners, and not whether a person has or has not been guilty of any corrupt or illegal practice (*d*).

Expunging name where qualification insufficient.

466. The revising barrister must expunge the name of every person, whether objected to or not, whose qualification as stated in any list is insufficient in law to entitle such person to be included therein (*e*); but unless properly objected to he has no power to expunge a name if the qualification be good on the face of it (*f*).

Deceased persons.

467. He must expunge the name of every person who, whether objected to or not, is proved to him to be dead (*g*).

Again, when any entry in any list and an entry in a return of deaths made to the overseers appear to relate to the same person, the

(*q*) *Kent* v. *Fittall* (No. 2), [1908] 2 K. B. 933, C. A., *per* BUCKLEY, L.J., at pp. 947, 948. Compare also *Storey* v. *Bermondsey* (*Town Clerk*), [1910] 1 K. B. 203, and see p. 223, *ante*.

(*r*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (11). Where two revising barristers had been appointed for the same district, and one of them had expunged a name, it was held that the other had no power to restore it in the absence of the objector (*Blain* v. *Pilkington* (1864), 18 C. B. (N. S.) 6).

(*a*) *Jenkins* v. *Grocott*, [1904] 1 K. B. 374.

(*b*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 39 (5).

(*c*) *Ibid.*, s. 39 (6).

(*d*) *Ibid.*, s. 39 (7).

(*e*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (3).

(*f*) *Smith* v. *James* (1865), L. R. 1 C. P. 138.

(*g*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (4). As to registrar's returns to overseers, see p. 198, *ante*.

revising barrister must inquire whether such entries relate to the same person, and on proof being made to him that they do, he must expunge the entry in the list (*h*).

Insufficient description.

468. He must also expunge the name of every person, whether objected to or not, whose name or place of abode, or the nature of whose qualification, or the name or situation of whose qualifying property, if the qualification is in respect of property, or with respect to whom any other particulars required to be stated in the list, is or are either wholly omitted or in the judgment of the revising barrister insufficiently described for the purpose of being identified (*i*), unless the matter or matters so omitted be supplied to his satisfaction before he has completed the revision of the list in which the omission or insufficient description occurs, and in case such matter or matters are so supplied he must then and there insert the same in such list (*k*).

Incapacitated persons.

469. He must expunge the name of every person, whether objected to or not, where it is proved to him that such person was on the last day of July then next preceding incapacitated by any law or statute from voting for the county or borough to which the list relates (*l*). By persons incapacitated by law or statute are meant persons who from some inherent or for the time being irremovable quality in themselves have not, either by prohibition of statutes or at common law, the status of electors. Such for example are peers, women (in parliamentary elections), persons holding certain offices or employments the subjects of statutory prohibitions, and persons convicted of crimes which disqualify them from voting (*m*). The receipt of parochial relief, non-residence within the proper distance of the borough, non-occupation, insufficient qualification, are not within the meaning of the expression (*n*).

(*h*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (5).

(*i*) It is a question for the revising barrister whether the property described in the register is sufficiently described for identification (*Wood* v. *Willesden Overseers* (1845), 2 C. B. 15; see also *Eckersley* v. *Barker* (1845), 7 Man. & G. 76; *Walker* v. *Payne* (1845), 2 C. B. 12. In the last case it was held that "travelling abroad" is a sufficient description of the place of abode if it truly represents the facts).

(*k*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (6).

(*l*) *Ibid.*, s. 28 (7); Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1.

(*m*) See pp. 139, 145, 182—184, *ante*.

(*n*) *Stowe* v. *Jolliffe* (1874), L. R. 9 C. P. 734, *per* Lord COLERIDGE, C.J., at p. 750. This case was decided on s. 7 of the Ballot Act, 1872 (35 & 36 Vict. c. 33), on another point, but was followed in *Hayward* v. *Scott* (1879), 5 C. P. D. 231, where it was held that "incapacity" in sub-s. 7 of s. 28 of the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), means such incapacities as those mentioned in *Stowe* v. *Jolliffe*, *supra*, not a mere temporary disqualification by reason of the receipt of parochial relief during the qualifying period, consequently that the revising barrister was not bound to expunge the name of a person who had been in the receipt of such relief. Cases on disqualification are *Kennedy* v. *Buchanan*, [1903] 2 I. R. 484, C. A.; *Ash* v. *Nicholl*, [1905] 1 K. B. 139; *Beauchamp* (*Earl*) v. *Madresfield* (1872), L. R. 8 C. P. 245; *Bristol* (*Marquis*) v. *Beck* (1907), 71 J. P. 99; *Kirkhouse* v. *Blakeway*, [1902] 1 K. B. 306.

SECT. 2. Revising Barristers.

Notice of intention to expunge.

470. Before expunging from a list the name of any person not objected to the revising barrister must cause such notice, if any, as appears to him proper or necessary under the circumstances of the proposal to expunge the name to be given to or left at the usual or last known place of abode of such person (*o*).

Names to be retained.

471. Subject to these provisions the revising barrister must retain the name of every person not objected to, and also of every person objected to, unless the objector appears by himself or by some person on his behalf in support of his objection (*p*).

Double entries.

472. Where the name of a person appears to be entered more than once as a parliamentary voter on the list for the same parliamentary county (*q*) or the same parliamentary borough (*r*), or more than once as a county elector (*s*) or burgess (*a*), the revising barrister must inquire whether such entries relate to the same person, and on proof being made to him that they do so must retain one of the entries for voting (*b*), and place against the other, if the person is entitled to vote in respect of that entry as a county elector or burgess, a mark signifying that his name should be printed in division III. of the list, or if he is entitled to vote only as a parochial elector a mark signifying that he is entitled to be registered as a parochial elector (*c*).

(*o*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (8); Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1.

(*p*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (9); Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1. In *R.* v. *Soden*, [1897] 1 Q. B. 188, the revising barrister had given notice that the lists would be closed at a certain sitting of the revision court. After the sitting the revising barrister declared the lists closed. A voter had been objected to. His agent and the objector were present throughout the sittings. On the next day the revising barrister allowed the objector to prove service and give *primâ facie* proof of his objection, but refused to allow the voter to give evidence on the ground that the lists were closed. It was held that the barrister was justified notwithstanding sub-ss. 9, 10 of s. 28 of the Act. See also *R.* v. *Soden*, [1896] 1 Q. B. 634, C. A.

(*q*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (9), (a).

(*r*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (14).

(*s*) County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 7 (5). Though a person be registered in more than one county division he can only vote at the same county council election for one of those divisions (*Knill* v. *Towse* (1890), 24 Q. B. D. 697, C. A.).

(*a*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (14).

(*b*) *Ibid.*; Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (9) (a); County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 7 (5).

(*c*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (14); Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (9) (a); County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 7 (5), as amended by the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 44 (6). There is no appeal from the revising barrister's refusal to make a note against a name (*Arnold* v. *Sharpe* (1891), Fox & S. Reg. 252. The following are the marks and expressions usually adopted by revising barristers, and the respective significations of such marks. "D. 3" is a mark placed against an entry in division I. of the occupiers list, and it means: "This entry of this name is to be taken out of division I. by the clerk of the county council when he makes up the register and is to be placed instead on division III., but without an asterisk." This mark is used

Where the name of a person is entered both in the ownership list and in the occupation list of voters in the same parish the revising barrister may place against the name on the occupation list a mark or note signifying that the name should be printed in division III. of the list, and then an asterisk or other mark must be printed against the name (*d*).

Method of selection.

473. Any person whose name has been doubly entered may select the entry to be retained for voting, either for the parliamentary or the municipal franchise. The selection is made in boroughs by notice in writing to the revising barrister at the opening of the first revision court (*e*); in counties by notice in

when the person in question has no right to vote in respect of the entry against which it is placed because he has a parliamentary vote duly secured by another entry of his name in a different parish, but has a vote in respect of the entry against which the mark is placed at elections of county councillors, district councillors, parish councillors, and guardians, the law giving him a vote in each parish for these last-named purposes. At a series of bye-elections he may use each of these votes one after the other; but at a general election of county councillors, or of district councillors, or of guardians, he may only vote in one parish, however many the parishes may be in which his name is registered, though he may take his choice as to which parish shall be the one in which he shall exercise his vote (*Knill* v. *Towse* (1890), 24 Q. B. D. 186, 697, C. A.). In the case of district councils and boards of guardians the matter is separately provided for by rules made by the Local Government Board, see note (*g*) on p. 370, *post*. "* D. 3" is a mark placed against an entry in division I. of the occupiers list, and it means: "This entry is to be taken out of division I. by the clerk of the county council and is to be placed on division III. instead, and when so placed on division III. is to be marked with an asterisk." This mark is used when the person in question has no franchise in respect of the entry in question, either for parliamentary purposes or for elections of district councillors, parish councillors, or guardians, because he has already a vote for all such purposes duly secured to him in the same parish, but he has a vote in respect of the county in question for the election of county councillors. "S." or "P." is a mark placed against an entry in the ownership list or the occupiers list, and it means: "This entry is to be taken out of this part of the ownership or occupiers list, as the case may be (that is to say, the part containing the names of the persons entitled to the full franchise), and is to be transferred by the clerk of the county council, when making up the list, to the separate parochial list (which separate parochial list is divided into two parts, called ownership part and occupation part respectively)." This mark "S." or "P." is used when the person in question has no parliamentary or county council franchise of which he may avail himself in respect of the entry against which the mark is placed, because the voter in question has already a parliamentary and county council vote as owner or occupier duly secured to him in the same parliamentary constituency, but has a right to a parochial vote in respect of the entry in question, *i.e.*, he has a right to a vote at an election of the councillors of a parish council, or district council, or members of a board of guardians. These marks must be made by the revising barrister himself, and initialled by him—the overseers and the party agents in practice combining to supply him with the necessary information.

(*d*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 44 (7); and see note (*c*) on p. 234, *ante*.

(*e*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (14). Where a person on the list of voters in respect of a dwelling-house, who also claimed in respect of his place of business, and had given notice under the above sub-section selecting the entry to be retained for voting, it was held that the revising barrister rightly decided that at the time the notice of selection was given there was no duplicate entry on the list of voters to which the notice could apply (*Jones* v. *Munro*, [1899] 1 Q. B. 109); also held, following

SECT. 2. Revising Barristers.

writing, which may be sent by post at or before the first revision court at which the lists with the entries concerned are revised, or by application by or on behalf of the person at the revision of the first of such lists (*f*).

In boroughs.

Where, in a parliamentary borough, a person has made no selection, the entry to be retained is determined as follows: (a) If one of the entries is on the list of freemen, that entry must be retained; (b) if neither of the entries is on the list of freemen and one of the entries is the place of abode of the voter, this last must be retained; and (c) in any other case the entry in the list first revised must be retained. If any such entry to be retained is objected to, the revising barrister must not finally place a note against any other entry until the objection to the entry to be retained has been determined by him in favour of the voter (*g*).

Where a parliamentary borough is divided into divisions and, notwithstanding the provisions made by statute (*h*), the name of a person is entered on the register of parliamentary voters in more than one division of the borough without such note as above mentioned, and one of the entries is his place of abode, he is entitled to vote only in that division in which he is registered in respect of his place of abode, and must not vote in respect of any other entry (*i*).

If any question on appeal or otherwise arise as to the validity of the qualification for which the parliamentary voter or burgess is on the list for voting, recourse may be had for supporting the right of the voter or burgess to be on the parliamentary register or burgess roll for voting to any other qualification of such person appearing on the register or burgess roll. In the case, however, of a municipal borough divided into wards, a vote given in, or the right to vote in, one ward is not supported by a qualification appearing on the burgess roll for some other ward (*k*).

In counties.

In counties the selection of the vote to be retained is decided as follows: If one only of the entries is on the list of ownership voters, that entry must be retained; if all or none of the entries are on the list of ownership voters and one of the entries is the place of abode of the voter, this last must be retained; and in any other case the entry in that list first revised must be retained (*l*).

If any such entry to be retained is objected to, the revising barrister must not finally place a note against any other entry until the objection to the entry to be retained has been determined by him in favour of the voter (*l*).

Claim to vote at particular polling-place.

474. Any person whose name appears in the list of voters for a parish and whose place of abode, as stated in the list, is not within

R. v. *Revising Barrister of Liverpool Borough and Chadwick*, [1895] 1 Q. B. 155, that no appeal lay from the revising barrister.

(*f*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (9) (*b*).

(*g*) *Ibid.*, s. 5.

(*h*) Namely, Registration Act, 1885 (48 & 49 Vict. c. 15), and Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26).

(*i*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 5 (2).

(*k*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (14).

(*l*) Registration Act, 1885 (48 & 49 Vict c. 15), s. 4 (9) (*c*).

the polling district at which the parish is allotted to poll, but within the same county, is at liberty to make his claim before the revising barrister to vote at the polling-place of the district wherein his place of abode is, and any person whose name appears in any list, and whose place of abode is not within the same county, is at liberty to claim to vote at the polling-place of any district within the same county. The claim must be in writing and must be delivered to, and verified before, the revising barrister, who may then insert against the name the name of the polling-place at which the person is to vote (*m*).

Name to be put in proper division.

475. The revising barrister must place the name of every person in the division in which it should appear, regard being had to the title of the person to be on the list both as a parliamentary voter and as a county voter or burgess, or only in one of those capacities, and must expunge the name from the other division, if any, in which it appears (*n*).

Non-resident freemen.

476. At every annual revision at which any non-resident freemen not on the existing register are registered, the revising barrister must allot them among the divisions in such manner as may as nearly as possible maintain an equal number of non-resident freemen in each division, and must allot them according to alphabetical order (*o*).

Initialling the names and signing the paper.

477. Whether revising the lists of a county, city, or borough, the revising barrister must in open court write his initials against the names respectively expunged or inserted, and against any part of the lists in which any mistake has been corrected or any omission supplied, or any insertion made by him. And he must sign his name to every page of the several lists so settled (*p*). But he is bound, before signing any page of any list, to read audibly in open court the names expunged and inserted by him therein, and all corrections and insertions made by him (*q*).

Transmitting lists.

478. After completing his revision for each polling district before proceeding to his next revision, the revising barrister must, if practicable, transmit the lists to the clerk of the county council or the town clerk as the case may be (*r*).

(*m*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 36.

(*n*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 28 (15); Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1. Where a name was expunged from division I. in consequence of an objection to the parliamentary vote only, the voter was held not entitled to have his name placed in division III. without proof of his being qualified to be on the burgess roll (*Greenway* v. *Bachelor* (1883), 12 Q. B. D. 376; also see *Lord* v. *Fox*, [1892] 1 Q. B. 199).

(*o*) Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), s. 14 (2) (b).

(*p*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 41.

(*q*) County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 15.

(*r*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (6); Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 48; Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 45 (1), applied by County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 7 (2). The clerk of the county council must keep the lists sent to him among the records of sessions (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 47).

SECT. 2. Revising Barristers.

The revising barrister, whether revising the lists of a parliamentary county or a parliamentary borough, must, as part of the business of the revision, at the request of the town clerk of any municipal borough, sign and deliver to him a duplicate of the whole or part of any revised list made out in divisions and relating to that municipal borough (*s*).

Costs.

479. The revising barrister's power to award costs is strictly limited. He may do so if it appears to him that any person has made or attempted to sustain any groundless or frivolous and vexatious claim or objection or title to have any name inserted or retained at any revision. In that case he may order the payment by such person of the costs or any part thereof of any person in resisting such claim or objection or title (*a*). The maximum amount in respect of any one vote is £5 (*b*).

In the case of an objection, the revising barrister, on the application of the person objected to, or of anyone on his behalf, and upon production of the notice of objection, must award costs in respect of every ground of objection (*c*) which, in his opinion, has been groundlessly or frivolously and vexatiously stated (*d*). The costs must in such cases be awarded to the amount at least of 2*s*. 6*d*. (*e*), and this though the name of the person objected to is expunged upon some other ground of objection stated in the same notice of objection, since every separate ground of objection is treated as a separate objection (*f*).

Again, where objection is made otherwise than by an overseer to any person whose name appears on a list of voters or burgesses, and the name is retained on the list, unless the revising barrister is of opinion that the objection was reasonably made, either because of a defect or error in the entry to which the objection relates or because of a difficulty in verifying or identifying the particulars comprised in such entry, or unless for some other special reason he

(*s*) This applies whether the municipal borough is "co-extensive with or included in" either the area of a parliamentary borough (Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict, c. 26), s. 31, or the area of a parliamentary county (County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 2 (1)).

(*a*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 46.

(*b*) County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 14, amending Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 46.

(*c*) Persons objecting after giving notice to the revising barrister, under the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 39, are in the same position as to costs as persons who have given notice of objection. The section is express as to this.

(*d*) County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 8; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 26.

(*e*) *Ibid.* Presumably the maximum of £5 fixed by the County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 14, amending the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 46, applies to this case also; but compare the County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 13.

(*f*) County Voters Registration Act, 1865 (28 & 29 Vict. c. 36), s. 8; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 26.

otherwise determines, he must order costs, not exceeding 40*s*., to be paid by the objector to the person objected to (*g*).

Order as to costs.

480. In every such case (*h*) the revising barrister must make an order in writing, specifying the sum which he orders to be paid for such costs, and by and to whom, and when and where, that sum is to be paid. He must date and sign this order and must deliver it to the person or persons to whom the sum is therein ordered to be paid (*i*).

The order may be made in any case notwithstanding any notice given by any party of his intention to appeal against any decision of the revising barrister in the same case. But in case of such appeal the order for the payment of costs is suspended and abides the event of the appeal unless the court of appeal (*k*) otherwise directs (*l*).

No appeal is to be allowed or entertained against or only in respect of any such order for the payment of costs (*m*).

Whenever any revising barrister has made any such order for the payment of any sum of money for costs by any person who has made any objection as above described, the revising barrister must not hear or admit proof of any other objection or notice of objection made or signed by the same person until the costs are paid to the person entitled to receive them, or are deposited in the hands of the revising barrister in court for the use of the person so entitled (*n*).

Fines.

481. The revising barrister has power in certain cases to inflict fines (*o*).

Account of expenses.

482. An account of all expenses incurred by the overseers of every parish and township in carrying out their registration duties must be laid before the revising barrister at the court at which the list of voters for the parish or township is revised (*p*). The account must include the fees paid to the registrar of births and deaths for making his returns of deaths (*q*).

(*g*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 27 (3); Registration Act, 1885 (48 & 49 Vict. c. 15), s. 1 (1), (2); County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4.

(*h*) In terms this applies only to the first case where the revising barrister has a discretion to allow costs under the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 46, but presumably it now applies to all cases of a revising barrister's order for costs.

(*i*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 46.

(*k*) Meaning, apparently, here the Divisional Court. See for the application of the enactment, *Wansey* v. *Perkins* (1845), 7 Man. & G. 127, 133.

(*l*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 46.

(*m*) *Ibid.* See *Burns* v. *MacLaine* (1894), 29 I. L. T. 20, C. A. (an Irish case).

(*n*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 46. But the person so barred as objector is, apparently, not barred as witness. See *Hanbidge* v. *Campbell* (1893), 1 Laws. Reg. Cas. 347.

(*o*) See pp. 532, 533, *post*.

(*p*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 57; County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 8.

(*q*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 11. The rate is 2*d*. for each return and 2*d*. further for every death in the return (Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 28). A

SECT. 2. Revising Barristers.

Certificate.

The revising barrister must sign and give to the overseers a certificate of the sum which he allows to be due to them in respect of the expenses (*r*). The certificate will be final and conclusive provided that it is signed by the revising barrister in open court, but any ratepayer present has a right to inspect the overseers' account of expenses and to object to any item included before the account is allowed by the revising barrister, who must hear and make a decision on any such objection (*s*).

Allocation of overseers' expenses.

483. The law with regard to the application of receipts and the allocation of the expenses of overseers in respect of their registration duties would seem to be as follows (*t*) :

Where a parish is situate in a parliamentary but not in a municipal borough one-half of the expenses and receipts of registration in respect of the parish is defrayed out of and paid to the county fund and the other half is defrayed out of and paid to the poor rate of the parish. The revising barrister must, as part of the business of the revision, if necessary, determine what expenses and receipts are incurred, or arise, or have been incurred, or have arisen in respect of the parish (*a*).

Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the registration expenses properly incurred by the overseers, and all moneys received in respect of the lists, are respectively paid and applied as follows:

If the area of the parliamentary borough and the area of the municipal borough are wholly co-extensive, one-half of the expenses is defrayed (*b*) out of the poor rates (*c*) and the other half is defrayed out of the borough fund, and one half of the receipts is applied to the poor rates (*d*) and the other half is paid to the borough (*e*).

In all other cases the expenses and receipts of the area common to the parliamentary borough and to a municipal borough are as to one half defrayed and applied as expenses and receipts out of and

relieving officer is entitled to a certificate of expenses incurred in attending a revision court (Parliamentary Electors Registration Act, 1868 (31 & 32 Vict. c. 58), s. 31).

(*r*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 57.

(*s*) Parliamentary Electors Registration Act, 1868 (31 & 32 Vict. c. 58), s. 32.

(*t*) The Acts bearing on the matter are the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 53, 55, 57; the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 30 ; the Registration Act, 1885 (48 & 49 Vict. c. 15), s. 6 (2); the County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4; and the Registration of Electors Act, 1891 (54 & 55 Vict. c. 18), s. 2. These sections are to be read together.

(*a*) Registration of Electors Act, 1891 (54 & 55 Vict. c. 18), s. 2.

(*b*) The Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 30, says "in the manner provided by the Parliamentary Registration Acts," *i.e.*, in this case ss. 55 and 57 of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18).

(*c*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 57.

(*d*) *Ibid.*, s. 53.

(*e*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 30 (1).

to the poor rates, and as to the other half are defrayed out of and applied to the borough fund (*f*).

Any expenses or receipts incurred or arising in respect of more than one such area are apportioned between the several areas in respect of which they are incurred or arise, in the proportion, as nearly as possible, in which they are incurred and arise in respect of the several areas, regard being had to the number of parliamentary voters or burgesses in each area, or any other circumstances occasioning the expenses or giving rise to the receipts. The revising barrister must, as part of the business of the revision, determine, if necessary, in respect of what area or areas any expenses or receipts are incurred or arise, and how much is attributable to each area (*g*).

In a parish not situate in a municipal borough nor in a parliamentary borough the receipts and expenses are applied to and defrayed out of the poor rates (*h*).

Relieving officers' expenses.

484. Any expenses incurred by a relieving officer in attending a revising barrister (the amount to be certified by the revising barrister) are deemed to be expenses properly incurred by him, and must be defrayed accordingly (*i*).

SECT. 3.—*The Register.*

SUB-SECT. 1.—*Compiling the Register after Revision.*

Compiling the register.

485. After the conclusion of the revising barrister's courts much clerical and other work is required before the register will be ready for use. A fixed interval is allowed by law for this purpose, in the case of the burgess roll up to 20th October (*k*), in the case of the county register up to 20th December (*l*), and in the case of the parliamentary register up to 31st December (*m*).

This duty of proper arrangement devolves on the clerk of the county council or the town clerk as the case may be (*n*).

Printing the lists.

486. Both in counties and parliamentary boroughs the responsible officer (*o*) must cause copies of the lists to be printed (*p*).

(*f*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 30 (2).

(*g*) *Ibid.*

(*h*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 53, 57.

(*i*) Parliamentary Electors Registration Act, 1868 (31 & 32 Vict. c. 58), s. 31.

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 45 (2).

(*l*) County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 2.

(*m*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 47; Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 38.

(*n*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (5), (6); Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 47; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 44 (6). When the revising barrister sends off his lists the names are not altogether arranged in the order in which they will appear in the register, *e.g.*, claimants have been revised in separate lists, and many of the names belonging to division III. of the occupiers lists still appear in division I., with a note signifying that they must be transferred. So also as to parochial electors.

(*o*) *I.e.*, the clerk of the county council or the town clerk.

(*p*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (7); Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 48.

SECT. 3. The Register.

The corrupt and illegal practices list, if any, must be appended to the register (*q*).

Order of names.

487. The first matter that arises on the arrangement of the register is as to the order of names. There are two systems—(1) alphabetical, (2) street or rate-book order.

The lists in counties must be arranged with the names in each parish or township in strict alphabetical order according to the surnames (*r*); but where a municipal borough or an urban district is co-extensive with any electoral division or divisions of a parliamentary county, the lists of voters may be directed by the county council to be made out according to the order in which the qualifying premises appear in the rate-book (*s*).

In boroughs, however, the rule is in favour of street order, and any other order is an exception. If and so far as the local authority (*a*) so direct, the lists and registers of parliamentary voters in parliamentary boroughs, and the burgess lists and rolls in municipal boroughs, will be arranged in the order of the rate-book for the parish, or as nearly thereto as will show the qualifying premises in street order, subject, in the case of a municipal borough divided into wards, to the division of the burgess roll into ward lists (*b*).

In every part of the metropolis (*c*) the lists of parliamentary voters and of county electors must be arranged in the order of the rate-book, unless the local authority otherwise direct (*d*).

Numbering the names.

488. The names in the register must be numbered. In counties the number "1" must be prefixed to the first name in each polling district, so that there may be a separate series of numbers for each polling district, and such distinctive letter must be applied to each polling district as may be determined by the local authority creating the polling district, or in default of such determination by the clerk of the county council (*e*).

In boroughs each entry on the parliamentary register, the burgess roll, and the parochial electors list must be distinguished by a number, either alone or in combination with such letter or

(*q*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 39 (8).

(*r*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 47.

(*s*) County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4 (3).

(*a*) In municipal boroughs, the town council (Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 34; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 21). In parliamentary boroughs, the authority having power to divide the borough into polling districts (Parliamentary Electors Registration Act, 1868 (31 & 32 Vict. c. 58), s. 18).

(*b*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 21.

(*c*) And in every part of a parliamentary borough the whole or greater part of which is situate in the metropolis. Metropolis means the City of London, and the parishes and places mentioned in Scheds. A, B, C of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120) (County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 5). See title METROPOLIS.

(*d*) County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 5.

(*e*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (7).

distinguishing mark as the local authority (*f*) from time to time fixes (*g*).

There will be one series of numbers for the whole of each parliamentary borough, or if it is divided into electoral divisions or wards, for each division or ward, save that if the local authority so direct, there may be one series of numbers for the whole borough, whether parliamentary or municipal, or a separate series of numbers for each polling district, whether parliamentary or municipal (*h*).

Order of polling districts.

489. The polling districts themselves, both in counties and boroughs, must be in alphabetical order, and every parish or township within such polling district likewise in the same order (*i*). In boroughs the town clerk must add at the end of the lists for each polling district a list of freemen (if any) entitled to vote in the district (*k*).

Supplemental list.

490. The clerk of the county council must, as soon as possible after the receipt of all the revised lists of his county, cause to be made out and printed a separate supplemental list for each district, containing the names of all persons whose names do not appear in any list of voters for the parishes in the district, but who have been registered by the revising barrister as entitled to vote at the polling place of the district; the supplemental list must be placed at the end of the parish lists in each polling district, and the names therein must be numbered consecutively after the rest of the lists in the polling district (*l*).

But where a person, whose qualification is in a parish in one polling district, has been registered by the revising barrister as being entitled to vote at the polling place of another district, his name must be retained in the list of the parish in which he is qualified, and must be numbered consecutively with the other names, and an asterisk must be placed against his name (*m*).

How lists to be printed.

491. The lists must be printed in a book or books. Every book must be printed and arranged so that the list of voters for every separate parish or ward contained therein may be conveniently and completely cut out or detached from all the other lists of voters contained in the same book, so that all the lists for every or any polling place, or the list of every or any single parish, may be ready for the necessary purposes or for sale (*n*).

The clerk of the county council must add at the end of the register a summary of the numbers of voters in each polling district (*o*).

(*f*) Under the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26).
(*g*) Registration Order, 1895, Sched. III., Instruction 15.
(*h*) *Ibid.* 16.
(*i*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 47, 48.
(*k*) Registration Order, 1895, Sched. III., Instruction 12.
(*l*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (8).
(*m*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 44 (5); Registration Order, 1895, Sched. II., Instruction 14 (i.).
(*n*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 47, 48.
(*o*) Registration Act, 1885 (48 & 49 Vict. c. 15), s. 4 (8).

SECT. 3. The Register.

Where the revising barrister places a mark against any name signifying that it is to be printed in division III. of the occupiers list, or in the parochial electors list, that name must accordingly be printed in the proper order, either alphabetically or according to the street order in division III., or in the parochial electors list, and where (*p*) the revising barrister places against any name any mark or note which renders it necessary to print an asterisk or other mark against any name so printed in division III., that asterisk or other mark must be added (*q*).

SUB-SECT. 2.—*The Completed Parliamentary Register.*

Delivery of register.

492. The clerk of the county council or the town clerk must sign and deliver the book containing the parliamentary register on or before the last day of December (*r*) to the sheriff of the county or the returning officer of the borough, to be by them and their successors safely kept for the requisite purposes (*s*).

The book then forms the register of persons entitled to vote for the county or borough to which it relates at any election which takes place during the year commencing on the 1st January after the register is made (*t*). It does not become the register until signed by the clerk of the county council or town clerk and delivered to the sheriff or returning officer (*a*).

Copy to be sent to Secretary of State.

493. The clerk of the county council or town clerk or other officer having charge of the register must, within twenty-one days after 1st February, transmit to one of His Majesty's principal Secretaries of State a printed copy of the register then in force (*b*).

Copies to be sold.

494. The clerk of the county council and the town clerk must keep printed copies of the register and must deliver them, or any part, to any person applying upon payment of the prescribed price (*c*). But no person is entitled to a copy of any part of any register relating to any parish or township without taking or paying for the whole that relates to it (*d*).

SUB-SECT. 3.—*Registers of County Electors and Burgesses.*

Registers of county electors and burgesses.

495. The clerk of the county council must make up a register of all persons registered as burgesses or county electors in the county,

(*p*) Under the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 44 (7).

(*q*) Registration Order, 1895, Sched. II., Instruction 14 (ii.); Sched. III., Instruction 17.

(*r*) Altered from November by Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 38.

(*s*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 47, 48.

(*t*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 38; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 32.

(*a*) *Brumfitt* v. *Bremner* (1860), K. & G. 352, in which it was held that where a name included in the list signed by the revising barrister was by a mistake omitted by the printers, the clerk of the peace was right in correcting the mistake.

(*b*) Parliamentary Electors Registration Act, 1868 (31 & 32 Vict. c. 58), s. 37.

(*c*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 49 Rate in Table (2) of Sched. D of the Act.

(*d*) *Ibid.*, s. 49.

both for the county and for each county council electoral division, and such number of copies as the clerk of the county council may require of the revised list of burgesses must be delivered to him by the town clerk (*e*). In the administrative county of London the register must include the names of all parochial electors (*f*). A printed copy of parish lists of burgesses and county electors as revised will be the county register (*g*).

The county register must be completed before 20th December, and comes into operation on the next 1st January (*h*).

The burgess lists forming the burgess roll, which comes into operation on 1st November, will, on and after that day, until the next 1st January, form part of the county register in substitution for the former burgess lists (*i*).

Numbering the names.

496. The names in the county register must be numbered by electoral divisions or polling districts, unless in any case the council direct that they be numbered consecutively without reference to electoral divisions or polling districts (*k*).

Where the county has no electoral divisions the county register must be made in one general register for the whole county (*l*). Where the county has electoral divisions the register must be made in separate registers called division registers, one for each electoral division, containing the names of the persons entitled to vote in that division. These collectively form the county register (*m*). All persons registered in the county register, and such persons only, are deemed to be registered as county electors (*n*).

Printing and sale of copies.

497. The clerk of the county council must cause the parish county electors lists and the county register to be printed, and must deliver printed copies to any person on payment of a reasonable price for each copy (*o*).

Parish lists.

498. If a parish county electors list is not made or revised in due time, the corresponding part of the county register in operation before the time appointed for the revision will be the parish county electors list until a list for the parish has been revised and become a part of the county register (*p*). And if a county register is not made in due time, that in force before the time

(*e*) County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 7 (1).
(*f*) London County Council Electors Qualification Act, 1900 (63 & 64 Vict. c. 29), s. 2.
(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 45 (1); County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 7 (2).
(*h*) County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 2 (1).
(*i*) *Ibid.*, s. 2 (2).
(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 45 (3), applied to counties by the County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 7 (2), as are also the provisions referred to in notes (*l*) to (*p*), *infra*.
(*l*) *Ibid.*, s. 45 (4).
(*m*) *Ibid.*, s. 45 (5).
(*n*) *Ibid.*, s. 45 (8).
(*o*) *Ibid.*, s. 48 (1).
(*p*) *Ibid.*, s. 71 (1).

SECT. 3. The Register.

appointed for the revision continues in force until the new register is made (*q*).

Adjoining counties.

499. If for the purpose of county council elections any portion of another county is added to any county, such portion of the county register as relates to the electors having qualifying property in the added part is deemed to be part of the register of the county for which the council is elected (*r*).

Burgess roll.

500. In municipal boroughs the burgess roll must be made in like manner *mutatis mutandis* (*s*), saving that the burgess roll must be completed on or before 20th October, and comes into operation on 1st November (*t*); this provision includes the revised lists for the London boroughs (*a*).

The town clerk, for the purpose of making the burgess roll, will use the duplicate list signed at his request by the revising barrister (*b*). If directed by the council the parish burgess lists, burgess roll etc. must be arranged in rate-book order, or otherwise in such order as will cause the lists and rolls to record the qualifying properties in successive order in their streets etc. (*c*). Subject to such direction, the lists etc. must be alphabetical (*d*).

Register of parochial electors.

501. The register of parochial electors—*i.e.*, for parish councils, district councils, and boards of guardians—will consist of the parliamentary and local government registers, together with the separate parochial list (*e*).

Receipts from sales.

502. The clerk of the county council in a county, and the town clerk in a borough, must keep an account of all receipts from the sale of copies of the register.

The clerk of the county council must pay over, or account for, such receipts, which are to be applied in aid of the county rate; and the town clerk must pay over and account for all moneys received by him to and amongst the overseers of the several parishes, to be applied in aid of the poor rate, the share of each parish being calculated, as nearly as possible, according to the proportion of persons whose names appear in the list of the particular parish to the number in the other lists on the same register (*f*).

Expenses of clerk to county council.

503. An account of all expenses incurred by the clerk of the county council in carrying out his registration duties (including all

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 71 (2), applied to counties by the County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 7 (2).

(*r*) Under s. 54 of the Local Government Act, 1888 (51 & 52 Vict. c. 41); County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 7 (6).

(*s*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 45, 48. For "clerk of county council" read "town clerk"; for "county register and division register," read "burgess roll and ward roll"; for "electoral division," read "ward."

(*t*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 45 (2).

(*a*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 3 (4).

(*b*) See p. 238, *ante;* Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 31.

(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 46 (1).

(*d*) *Ibid.*, s. 46 (2).

(*e*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 2 (1).

(*f*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 53.

proper and reasonable fees and charges for trouble, care, and attention in performance of the services and duties imposed on him (*g*), in addition to any money actually paid or disbursed by him in the matter (*h*), must be laid before the county council (*i*) after the expenses have been incurred, and the county council must make an order upon the county treasurer for the payment of the expenses, or so much as it allows to the clerk, out of the county fund (*k*).

Expenses of town clerk.

504. The town clerk must lay his account before the town council (*l*). In the case of a parliamentary borough situate in more than one municipal borough, the council whose mayor is returning officer will be the council to allow the expenses (*m*), except in London, where the council having the largest population within the parliamentary borough is the authority for the purpose (*n*).

A certificate must be given, and the expenses defrayed out of the poor rates of the several parishes in proportion (*o*).

In parliamentary boroughs.

505. Where the area of a municipal borough is wholly or partly co-extensive or included in the area of a parliamentary borough, the expenses and receipts of the town clerk are paid and applied as follows:

If the areas of the parliamentary and municipal boroughs are co-extensive, half the expenses are defrayed out of the poor rates, and the other half out of the borough fund; the receipts are treated in the same manner. In all other cases the expenses and receipts in respect of the common area are paid and applied, half out of and to the rates, and half out of and to the borough fund. Any expenses and receipts incurred or arising in respect of more than one such area are apportioned between the several areas concerned, in the proportion, as nearly as possible, in which they are incurred and arise, regard being had to the number of parliamentary voters or burgesses in each area or any other attendant circumstances. The revising barrister must determine, if necessary, the areas concerned and the amount attributable to each area (*p*).

Similarly, it seems that where a municipal borough is partly co-extensive with or included in the area of a parliamentary county, the receipts and expenses are divided in like proportion between the county fund and the rates (*q*).

(*g*) Imposed by Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18); Representation of the People Act, 1867 (30 & 31 Vict. c. 102); Representation of the People Act, 1884 (48 & 49 Vict. c. 3); Registration Act, 1885 (48 & 49 Vict. c. 15). The authorities for this are the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 31, and Registration Act, 1885 (48 & 49 Vict. c. 15), s. 8.

(*h*) *Ibid.*

(*i*) Altered from quarter sessions by Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (xii.).

(*k*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 54.

(*l*) *Ibid.*, s. 55.

(*m*) Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), s. 12 (4).

(*n*) London Registration Order in Council, 1901, 1 (Statutory Rules and Orders Revised, Vol. IX., Parliamentary Electors, England, pp. 68—70).

(*o*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 55.

(*p*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 30.

(*q*) *Ibid.*; County Electors Act, 1888 (51 & 52 Vict. c. 10), ss. 4, 8, referring to Registration Act, 1885 (48 & 49 Vict. c. 15), s. 6 (2).

SECT. 3. The Register.

Again, where a parish is situate in a parliamentary but not in a municipal borough, one half of the expenses and receipts are paid out of and to the county fund, and the other half out of and to the poor rates (*r*).

SECT. 4.—*Appeals.*

No appeal on facts.

506. The decision of a revising barrister is absolutely final upon any question of fact (*s*), or upon the admissibility (*t*) or effect (*a*) of any evidence or admission adduced or made in any case to establish any matter of fact only (*b*).

Statutory notice of appeal on point of law.

507. But when the decision is on a point of law material to the result of the case, any person (*c*) who has made any claim to have his name inserted in any list, or made any objection to any other person as not entitled to have his name inscribed on any list, or whose name has been expunged from any list, and who in any such case (*d*)

(*r*) Registration of Electors Act, 1891 (54 & 55 Vict. c. 18), s. 2.

(*s*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 65, *e.g.*, as to whether the signature of a name to a notice of objection is sufficient (*Hinton* v. *Hinton* (1845), 7 Man. & G. 163). As to whether a description is sufficient for identification (*Wood* v. *Willesden Overseers* (1845), 2 C. B. 15; *Thackway* v. *Pilcher* (1866), L. R. 2 C. P. 100). As to what constitutes a "building" (*Watson* v. *Cotton* (1847), 5 C. B. 51, followed in *Powell* v. *Farmer* (1865), 18 C. B. (N. S.) 168). In *Norris* v. *Pilcher* (1868), L. R. 4 C. P. 417, BOVILL, C.J., said, at p. 420: "As a general rule the revising barrister must decide all questions of fact, and on a pure question of fact the court cannot review his decision; but in this case the barrister has stated his reasons for arriving at his conclusion and, as I understand it, has referred to the court whether those reasons ought in law to have led him to the conclusion at which he arrived." There is no appeal from the revising barrister on the sufficiency of the service of a notice of objection (*Watson* v. *Pitt* (1848), 5 C. B. 77), but the sufficiency of the notice itself may be either a question of law or a question of fact (*Sheldon* v. *Flatcher* (1847), 5 C. B. 14); or as to what constitutes a duplicate entry at a given moment (*Jones* v. *Munro*, [1899] 1 Q. B. 109); or on sufficiency of residence (*Whithorn* v. *Thomas* (1844), 7 Man. & G. 1, *M'Daid* v. *Chambers* (*Keown's Case*) (1893), 29 I. L. T. 81, C. A.).

(*t*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 65, *e.g.*, the admissibility of a map (as in *Keys* v. *Collum* (1857), 7 I. C. L. R. 385, Ex. Ch.; followed in *Carroll* v. *Fisher* (1864), 15 I. C. L. R. 369, Ex. Ch.). There is no appeal from the refusal of the revising barrister to hear a witness until he has paid a fine (*Hanbidge* v. *Campbell* (1893), 1 Laws. Reg. Cas. 347; see also *Kent* v. *Fittall* (No. 2), [1908] 2 K. B. 933, C. A.).

(*a*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 65. The courts do not appear to have construed the word "effect." It probably means "weight." It cannot mean effect in law, because an appeal is given upon a point of law in many cases, as hereinafter set out; see *Norris* v. *Pilcher*, *supra*. When the question of admissibility is raised, the barrister must apply his mind to the question whether the evidence is legally admissible or not (*Storey* v. *Bermondsey* (*Town Clerk*), [1910] 1 K. B. 203, C. A.).

(*b*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 65.

(*c*) In respect to the parliamentary franchises "person" means male person (see *Wilson* v. *Salford* (*Town Clerk*) (1868), L. R. 4 C. P. 398). With regard to the municipal, local government, and parish franchises, females are included (Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 63; County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 2 (2); Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 43). As to women's disability, see p. 140, *ante*, and *Nairn* v *St. Andrews University*, [1909] A. C. 147.

(*d*) The right of appeal is strictly confined to "such" cases. Other cases not falling within this category are a voter's notice of selection in the case of

is aggrieved (*e*) by, or dissatisfied with, the decision, may either himself, or by some person on his behalf, give to the revising barrister before the rising of the court (*f*), on the same day on which the decision has been pronounced, a statutory notice which will be the foundation of an appeal to the High Court (*g*).

The notice must be in writing (*h*), and must state that the person so aggrieved or dissatisfied is desirous to appeal. It must also shortly state the decision against which he desires to appeal (*i*).

Statement of case.

508. The revising barrister, if he thinks it reasonable and proper that such appeal should be entertained (*k*), must state in writing the facts which, according to his judgment, have been established by the evidence in the case and which are material to the matter in question (*l*). But he must not state the evidence itself (*m*). He must also state in writing his decision upon the whole case and his decision upon the point of law in question appealed against (*n*). The statement need not be made in open court, but must be made as nearly as conveniently may be in the manner usual in stating any special case for the opinion of the King's Bench Division, and within ten days of the conclusion of the revision (*o*).

The barrister must sign this statement (*p*). It must be submitted

duplicate entries (*R.* v. *Revising Barrister of Liverpool Borough and Chadwick*, [1895] 1 Q. B. 155; *Jones* v. *Munro*, [1899] 1 Q. B. 109); refusal to make a note against a name under the County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 7 (5), or to hear an application on the ground that it was too late (*R.* v. *Soden*, [1896] 1 Q. B. 634, C. A.; *R.* v. *Soden*, [1897] 1 Q. B. 188); or to hear a barrister (*O'Connor* v. *Nicholson* (1891), Fox & S. Reg. 250); or as to costs (*Burns* v. *MacLaine* (1893), 29 I. L. T. 20, C. A.). In *Re Allen* (1859), 6 C. B. (N. S.) 334, where a voter did not appear against an objection to his county vote, and was by mistake struck off the borough list, the court could not interfere. See also *Hanbidge* v. *Campbell* (1893), 1 Laws. Reg. Cas. 347.

(*e*) Where an objector appeared, his notice of objection having been held to be bad, and the voter objected to had been otherwise struck off, it was held that the objector had no grievance and could not be heard (*Jones* v. *Marshall* (1871), 1 Hop. & Colt. 738).

(*f*) It is essential that the notice should be given before the rising of the court (*Guise* v. *Dilke* (1892), Fox & S. Reg. 283). The court cannot entertain an appeal against the revising barrister's decision unless the requirements of s. 42 have been complied with, or there be clear and unequivocal consent to waive performance of them (*Scott* v. *Durant* (1865), 18 C. B. (N. S.) 205).

(*g*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 42.

(*h*) This is apparently an absolute condition precedent (*Re Bane*, [1879] W. N. 200.

(*i*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 42.

(*k*) In certain circumstances he may be compelled to state a case; see p. 254, *post*.

(*l*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 42.

(*m*) *Pitts* v. *Smedley* (1845), 7 Man. & G. 85. See, however, the observations of FITZGIBBON, L.J., in the Irish case of *M'Intosh* v. *Chambers* (1894), 2 Laws. Reg. Cas. 45, C. A., at p. 48; also *Alexander* v. *Bourke* ("*Mount Argus*" *Case*) (1887), 21 I. L. T. 68.

(*n*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 42.

(*o*) *Ibid.*; Registration Act, 1908 (8 Edw. 7, c. 21), s. 1 (1).

(*p*) *Burton* v. *Blake* (1852), 11 C. B. 47. But the respondent may consent to the case being signed *nunc pro tunc* (*Burton* v. *Brooks* (1852), 11 C. B. 41). In *Nettleton* v. *Burrell* (1844), 7 Man. & G. 35, where the revising barrister, having assented to the substance of a special case agreed upon between the parties,

SECT. 4. Appeals.

to the appellant, who, if he approves, must, or someone on his behalf, at the end of the statement make a declaration in writing under his hand to the following effect, "I appeal from this decision," and return it to the revising barrister (*q*).

The revising barrister must then indorse on the statement the name of the county and polling district or city and borough, and of the parish or township to which it relates, and also the christian name and surname and place of abode of the appellant and respondent, and must sign and date the indorsement (*r*). He must deliver this statement, with the indorsement, to the appellant, and also deliver a copy, with the indorsement, to the respondent if he requires it (*s*).

Naming a respondent.

509. In every such appeal the party in whose favour the decision appealed against has been given is to be the respondent, but if there be no such party, or if such party or someone on his behalf in open court declines, and states in writing that he declines, to support the decision appealed against as respondent, then and in every such case the revising barrister may name any person who may be interested in the matter of the appeal, and who may consent, or the overseers of any parish or township, or the clerk of the county council, or the town clerk of the borough, to be, and such person so consenting, or such overseers or town clerk is to be deemed to be, the respondent or respondents (*t*). Where the clerk of the county council or the town clerk is respondent, he may be ordered to pay the costs of a successful appellant (*u*); and to enable an appellant to obtain such an order he may require the barrister to name such clerk of the county council or town clerk to be respondent (*v*).

Transmission of case to Crown Office.

510. The appellant must next transmit to the Master in the Crown Office, on or before the 26th October next after the conclusion of the revision, the statement made by the revising barrister in pursuance of the foregoing provisions (*a*), and must also deliver or

died without having finally settled the terms in which the statement should be made, the court refused to allow the case to be entered. *Quære*, whether, supposing the assent of the revising barrister to have been given to the special case in its terms, the court would allow the case to be entered without his signature after his death.

(*q*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 42; Registration Act, 1908 (8 Edw. 7, c. 21), s. 1 (2).

(*r*) *Ibid.* The indorsement need only (in a consolidated appeal) set forth the name of the person appealing on behalf of himself and the other appellants (*Sherwin* v. *Whyman* (1873), L. R. 9 C. P. 243). As to signature, where the indorsement had not been signed, and the appeal, though tendered in due time, was rejected by the officer for that reason, the court allowed it to be entered *de bene esse* after the due time, due diligence appearing to have been used to obtain the signature in time (*Pring* v. *Estcourt* (1846), 4 C. B. 71; but see *Wanklyn* v. *Woollett* (1847), 4 C. B. 86).

(*s*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 42.

(*t*) *Ibid.*, s. 43; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 38. See *Brumfitt* v. *Roberts* (1870), L. R. 5 C. P. 224.

(*u*) See p. 255, *post*.

(*v*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 38.

(*a*) Registration Act, 1908 (8 Edw. 7, c. 21), s. 1 (1).

send by post a ten days' (*b*) notice, signed by him (*c*), to the respondent in the appeal, stating his intention to prosecute the appeal (*d*).

Arrangement must be made for hearing any such appeals without delay, and, so far as possible, continuously (*e*).

Consolidating appeals.

511. It will often appear that the same point of law substantially governs many instances (*f*). For this reason, if it appears to any

(*b*) S. 64 of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), which has not been repealed, although ss. 62 and 63 were repealed by the Registration Act, 1908 (8 Edw. 7, c. 21), enacts that no appeal shall be heard when the respondent does not appear unless the appellant proves that due notice of his intention to prosecute the appeal was given or sent to the respondent ten days at least before the day appointed for the hearing of the appeal; provided that if it appears to the court that there has not been reasonable time to give or send such notice in any case, the court may postpone the hearing of the appeal as to the court seems meet. It would therefore seem that ten days' notice must still be given, and that the older cases are still in point. In *Palmer* v. *Allen* (1847), 5 C. B. 1, at p. 5, where, a case being signed on 30th October, notice to the respondent was served on 2nd November, and the first day for hearing appeals was 11th November, it was held a case for postponement. But in *Luckett* v. *Voller* (1861), K. & G. 371, following *Adey* v. *Hill* (1846), 1 Lut. Reg. Cas. 542, where the revising barrister gave his decision on 11th October, the appellant lodged the signed case with the master on 6th November, and on the same day gave a signed notice to prosecute his appeal to the respondent, and the court having fixed 11th November as the day of hearing, there were not ten days at least between the giving of the notice and the day appointed by the court for the hearing. The court refused to postpone the appeal as the case did not fall within the proviso of s. 64. There must be ten clear days' notice, exclusive both of the day of service and of the day appointed for the hearing (*Norton* v. *Salisbury* (*Town Clerk*) (1846), 4 C. B. 32. In this case, MAULE, J., said, at p. 37: "S. 63 shows that the time of giving this notice has nothing whatever to do with the time of the hearing. The party whose duty it is to give the notice ought to bestir himself to give notice as early as conveniently may be after the decision"; and see *Adey* v. *Hill* (1846), 4 C. B. 38). Other cases on this point are *Clarke* v. *Beaton* (1847), 5 C. B. 76; *Brown* v. *Tamplin* (1872), L. R. 8 C. P. 241. In *Aldworth* v. *Dore* (1848), 5 C. B. 87, it was held that where respondent does not appear the appeal will be dismissed unless the appellant is prepared with an affidavit of due service of notice to the respondent, or with a special affidavit of circumstances to come within the proviso of s. 64. Where the respondent appears he cannot object to the mode of service of notice of appeal (*Rawlins* v. *West Derby Overseers* (1846), 2 C. B. 72).

(*c*) Signature by the appellant himself is essential (*Petherbridge* v. *Ash* (1846), 4 C. B. 74).

(*d*) Registration Act, 1908 (8 Edw. 7, c. 21), s. 1 (1). The notice is essential (*Simpson* v. *Wilkinson* (1843), 5 Man. & G. 3, n.). A waiver by the respondent of the notice will not enable the court to entertain the appeal in his absence; but it is a ground for postponement (*Newton* v. *Mobberley* (1846), 2 C. B. 203). As to service of notice, where the revising barrister, under s. 43 of the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), had named certain persons, whom he supposed to be overseers, as respondents, and only one of these was actually an overseer, and they were served, and then the real overseers were served, it was held that the appellant had done all that was necessary (*Brumfitt* v. *Roberts* (1870), L. R. 5 C. P. 224).

(*e*) Registration Act, 1908 (8 Edw. 7, c. 21), s. 1 (1).

(*f*) Where the revising barrister has found in a consolidated appeal that all the cases depend on the same point of law, the court will not remit the case in order that he may state the qualifications of the parties whose appeals are consolidated with the principal case, provided that enough be stated for the court to give judgment in law (*Hitchins* v. *Brown* (1845), 2 C. B. 25). A

SECT. 4. Appeals.

revising barrister that the validity of any number of claims or objections determined by him at any court depends and has been decided by him upon the same point or points of law (*g*), and the parties or any of them aggrieved by or dissatisfied with his decision thereon have given notice of any intention to appeal therefrom, the revising barrister may declare that the appeals against such decision ought to be consolidated, and he must in such case state in writing the case and his decision thereon in the manner above described, and may name any person interested and consenting (*h*), for and on behalf of himself and all other persons in like manner interested in the appeal, to be the appellant or respondent respectively in the appeal. The person so named appellant or someone on his behalf must, at the end of the statement, make and sign a declaration in the following form or to that effect :—

"I, for myself and on behalf of all the other persons who are interested as appellants in this matter, and whose names are hereunder written, do appeal against this decision and agree to prosecute this appeal."

The person so named respondent, or someone on his behalf, must in like manner make and sign a declaration in writing in the following form or effect :—

"I, for myself and on behalf of all the other persons interested as respondents in this matter, and whose names are hereunder written, do agree to appear and answer this appeal" (*i*).

The name and, where necessary, the particulars of the qualifications (*k*) of every party intended to be joined in the consolidated appeal must be written under the above-mentioned declaration of the appellant or respondent respectively. But the revising barrister may, if necessary, in any case name the overseers of any parish or the town clerk of any borough to be the respondents or respondent in the consolidated appeal without any declaration being made or signed by them or him (*l*).

The proceedings in consolidated appeals are the same as those in single appeals. Every order, judgment, or decision of the High Court is equally valid and effectual for all the purposes of these provisions, and binding and conclusive upon all the parties named or referred to as parties to a consolidated appeal, and if in any case all or any of the parties make or enter into any agreement as to the mode of contributing among themselves to the costs and expense of the appeal, the agreement may, upon the application of any party or

consolidated appeal must be the statement of a single case the facts and law of which govern those cases which are made to depend on it (*Prior* v. *Waring* (1847), 5 C. B. 56; followed in *Robson* v. *Brown* (1856), 1 C. B. (N. S.) 34).

(*g*) *Bennett* v. *Brumfitt* (*Ashcroft's Case*) (1868), L. R. 4 C. P. 399, n.; *Bradley* v. *Baylis* (1881), 8 Q. B. D. 195, C. A., *per* BRETT, L.J., at p. 234.

(*h*) See *Druitt* v. *Lane* (1882), Colt. 307.

(*i*) Where the person named as respondent had not consented to answer for himself and the others interested, it was held that the defect was fatal to the consolidation, but that the single appeal might be heard (*Druitt* v. *Lane*, *supra*).

(*k*) See *Hitchins* v. *Brown* (1845), 2 C. B. 25.

(*l*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 44; see *Brumfitt* v. *Roberts* (1870), L. R. 5 C. P. 224.

parties to it, be made a rule of the High Court, if that court think fit. But if any consolidated appeals are not duly prosecuted or answered, the High Court or the Lord Chief Justice, or any judge of the High Court, may give to any party or parties interested in the appeal, upon application, the conduct or direction of the appeal or answer, as the case may require, instead of or in addition to any person named as before mentioned as appellant or respondent, and in such manner and upon such terms as the tribunal may think fit and order, or may make such other order in the case as may seem meet (*m*).

Objecting to consolidation.

512. If, after the revising barrister has declared that the appeal in any case ought to be consolidated with others, any person interested objects and refuses to be a party to or to be bound by such consolidated appeal, then that appeal may proceed separately, but the person so refusing or objecting will be liable to pay costs to the other party, and will not be entitled to receive any costs unless the court otherwise order (*n*).

If the person named in a consolidated appeal as respondent does not consent to answer the appeal on behalf of himself and the other persons similarly interested, this is fatal to the consolidation, but the single appeal may be heard (*o*).

Hearing the appeal.

513. When the appeal comes on for hearing in court the appellant has a right to begin (*p*), for the onus rests on him (*q*), even in the event of the respondent's absence (*r*). Where, however, counsel for the respondent admits that he cannot support the revising barrister's decision, the court may reverse it without argument (*s*). Where neither party appears the case will be struck out, and the court will not without sufficient reason restore it (*a*).

No question can be raised which does not appear from the case reserved (*b*), or which has not been raised in the court below (*c*). Also, generally, no alteration can be made in

(*m*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 45.

(*n*) *Ibid.*

(*o*) *Druitt* v. *Lane* (1882), Colt. 307.

(*p*) *Webb* v. *Aston* (1843), 5 Man. & G. 14.

(*q*) In *Colvill* v. *Lewis* (1846), 2 C. B. 60, it was held that the court cannot entertain an appeal in the absence of the respondent unless there be an affidavit of service upon him of the notice of appeal; and see *Cooper* v. *Harris* (1845), 7 Man. & G. 97. Where the respondent has had due notice and does not appear the court will not reverse the decision without hearing the appellant's counsel (*Pownall* v. *Hood* (1851), 11 C. B. 1; but see *Powell* v. *Caswell* (1849), 8 C. B. 14).

(*r*) *Cooper* v. *Harris*, *supra*.

(*s*) *Jarvis* v. *Peele* (1851), 11 C. B. 15.

(*a*) *Wansey* v. *St. Peter Le Poor* (*Overseers*) (1845), 7 Man. & G. 162. Where the respondent appears but the appellant does not, the court will affirm the decision with costs (*White* v. *Pring* (1849), 8 C. B. 13, following *Bage* v. *Perkins* (1845), 1 Lut. Reg. Cas. 255).

(*b*) *Gregory* v. *Turner* (1868), 1 Hop. & Colt. 43. *Quære* whether the respondent (an objector) may rely on objections overruled by the revising barrister but which have not been appealed against (*West* v. *Robson* (1857), 3 C. B. (N. S.) 422, 431).

(*c*) *Nunn* v. *Denton* (1844), 7 Man. & G. 66.

SECT. 4. Appeals.

a case, even by consent (*d*). Only one counsel on each side will be heard (*e*).

A notice of any preliminary objection to be taken by the respondent should be given to the appellant (*f*).

Remitting case.

514. If the court on the hearing are of opinion that the statement of the matter of appeal is not sufficient to enable them to give judgment in law, they may remit the statement to the revising barrister for fuller statement (*g*).

Where a case is remitted the course is for the master to return it to the appellant with a note of the facts to be supplied, and for the appellant to transmit it to the revising barrister (*h*).

Mandamus to state a case.

515. There is no method of appealing in the absence of a case stated; but although, as above appears, the revising barrister is only to state a case if he thinks it reasonable and proper that the appeal should be entertained (*i*), there is power to compel him to state a case if the High Court is of opinion that his refusal was not reasonable and proper. In such case an application for a rule in the nature of mandamus may be made, but only upon the following conditions, namely, that if any person feels aggrieved by a revising barrister neglecting or refusing to state a case, he may within one month after such neglect or refusal apply to the High Court upon affidavit of the facts (*k*) for a rule calling on the revising barrister, and also on the person, if any, in whose favour the decision from which the applicant desires to appeal was given, to show cause why a rule should not be made directing the appeal to be entertained and the case to be stated (*l*). Thereupon the High Court,

(*d*) *Whithorn* v. *Thomas* (1844), 7 Man. & G. 1. But in this case the court allowed the revising barrister, being present in court, to make an alteration.

(*e*) *Gadsby* v. *Warburton* (1844), 7 Man. & G. 11.

(*f*) Otherwise, if the objection succeeds, the appeal will be dismissed without costs (*Re Speight, Ex parte Brooks* (1884), 13 Q. B. D. 42).

(*g*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 65. The court will not remit for the insertion of a fact considered immaterial by the revising barrister (*Hinton* v. *Hinton* (1845), 7 Man. & G. 163, 166, n.), nor for the qualification of parties whose appeals are consolidated in a principal case, provided that enough is stated for the court to give judgment in law (*Hitchins* v. *Brown* (1845), 1 Lut. Reg. Cas. 328), but will remit where the revising barrister has stated evidence and not facts (*Pitts* v. *Smedley* (1845), 7 Man. & G. 85). By consent of parties an amendment may be made in court (*Whithorn* v. *Thomas* (1844), 7 Man. & G. 1).

(*h*) *Webb* v. *Aston* (1843), 5 Man. & G. 14; *Coogan* v. *Luckett* (1846), Bar. & Arn. 716.

(*i*) See p. 249, *ante*.

(*k*) As to affidavits by the revising barrister and further affidavits in reply thereto, see *Re Sale* (1880), Saint, Registration Cases, 4th ed. 339; and *Re Bane*, [1879] W. N. 200, as reported Saint, Registration Cases, 4th ed. 338, which appear to show that the making of affidavits by the revising barrister is usually inconvenient, but not necessarily objectionable in any case. But in *R.* v. *Nepean, Ex parte Jenkins* (1903), 52 W. R. 264, Lord ALVERSTONE, C.J., said: "I think it better that in future the barrister's statement (against a rule *nisi*) should be made by affidavit, though of course there may be cases in which the matter cannot be put on affidavit." Such an affidavit was made in *R.* v. *Soden*, [1896] 1 Q. B. 634, C. A. See title CROWN. PRACTICE, Vol. X., p. 109.

(*l*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 37.

or any judge thereof in chambers, may make a rule to show cause and make it absolute or discharge it, as seems just (*m*).

If the revising barrister is served with any rule absolute, he must thereupon state the case accordingly; and the case must be stated and the appeal entertained and heard notwithstanding any limitations of time or place above appearing (*n*).

Costs of appeal.

516. The court may make any such order respecting the payment of all or any part of the costs of an appeal as may seem meet, subject as follows: Where the respondent or person named to be respondent does not appear before the court in support of the decision of the revising barrister, no costs are to be given either against him or for him (*o*); to this there is an exception, namely, that where either the clerk of the county council or the town clerk is named respondent, the court may give costs against him (*p*).

In the majority of cases the successful respondent has received costs, but the successful appellant has not (*q*). There is, however, no fixed rule.

(*m*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 37.

(*n*) *Ibid.*; see p. 249, *ante*.

(*o*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 70.

(*p*) Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 38.

(*q*) In *Sutton* v. *Wade* (appeal dismissed), *Gale* v. *Overend*, *Moore* v. *Atkinson* (appeals allowed) (1890), Fox & S. Reg. 170, 174, 179, 185, GRANTHAM, J., on *Simpson* v. *Wilkinson* (1844), 1 Lut. Reg. Cas. 168, 178, being cited in an application for costs, said: "That case was decided some time ago. We think that in this court, as in others, the proper rule of practice is for costs to follow the event"; and see *Beal* v. *Exeter* (*Town Clerk*) (1887), Fox & S. Reg. 31, 37. But in *Heelis* v. *Blain* (1864), 18 C. B. (N. S.) 90, ERLE, C.J., said, at p. 110: "Where the decision is in favour of the appellant no costs are allowed. But where it is in favour of the respondent the general rule is to give him his costs, the court reserving to itself the right to modify the rule as the circumstances of each case may seem to render it expedient." See also *Smith* v. *Huggett* (1861), K. & G. 434, 447. In *Capell* v. *Aston Overseers* (1849), 8 C. B. 1, WILDE, C.J., said: "Where the court affirms the decision and thinks it is a case in which the appellant was not warranted in questioning it afterwards, it is not unusual to give costs, but where the appellant has got the judgment of the court in his favour it seems unreasonable to call upon the overseers to pay costs."

In the following cases the revising barrister's decision was affirmed with costs: *De Boinville* v. *Arnold* (1856), 1 C. B. (N. S.) 3, 22; *Birch* v. *Edwards* (1847), 5 C. B. 45; *Watson* v. *Pitt* (1847), 5 C. B. 77; *Mashiter* v. *Dunn* (1848), 6 C. B. 30; *Beamish* v. *Stoke Overseers* (1851), 11 C. B. 29, 40; *Collins* v. *Thomas* (1852), 12 C. B. 639, 641; *Beeson* v. *Burton* (1852), 12 C. B. 647, 660; *Passingham* v. *Pitty* (1855), 17 C. B. 299, 315; *Baker* v. *Locke* (1864), 18 C. B. (N. S.) 52, 64; *Foster* v. *Medwin* (1880), 5 C. P. D. 87, 96; *Childs* v. *Cox* (1887), Fox & S. Reg. 84, 92; *Sutton* v. *Wade* (1890), Fox & S. Reg. 170, 185; *Barnett* v. *Hickmott* (1895), Fox & S. Reg. 412, 425.

In the following cases the appeal was allowed, but without costs: *Capell* v. *Aston Overseers* (1849), *supra*; *Lee* v. *Hutchinson* (1850), 2 Lut. Reg. Cas. 159, 169; *Barclay* v. *Parrott* (1856), 1 C. B. (N. S.) 49, 52; *Beal* v. *Ford* (1877), 3 C. P. D. 73, 80; *Smith* v. *Woolston* (1878), 4 C. P. D. 73, 79; *James* v. *Howarth* (1879), Colt. 87; *Lowcock* v. *Broughton Overseers* (1883), 12 Q. B. D. 369; *Whitwell* v. *North Riding of Yorkshire* (*Clerk of the Peace*) (1889), Fox & S. Reg. 152, 156; *Lord* v. *Fox* (1891), Fox & S. Reg. 266, 274.

In the following cases the appeal was dismissed, but without costs: *Sherlock* v. *Steward* (1859), 7 C. B. (N. S.) 21, 28; *Collier* v. *King* (1862), 11 C. B. (N. S.) 478, 479 (on the ground that there was a reasonable case for argument); *Ford* v.

SECT. 4. Appeals.

Appeal to Court of Appeal.

517. Every judgment or decision of the High Court is final and conclusive (*r*) as regards the particular voter whose vote has been discussed upon the point of law adjudicated upon (*s*), unless in any case it may seem fit to the High Court (*t*) to give special leave to appeal to the Court of Appeal, whose decision in such cases will be final and conclusive (*a*).

The House of Lords, therefore, cannot, unless the issue be raised indirectly in another case (*b*), overrule the conclusion of law arrived at in the Court of Appeal.

Notice of judgment.

518. If the judgment of the High Court reverses the decision of the revising barrister, notice (*c*) of the judgment or order of the court must be given forthwith to sheriffs in counties or returning officers in boroughs having the custody of the register, or to the town clerk having the custody of the burgess roll, or to the clerk of the county council (*d*), as the case may require (*e*).

This notice must be in writing under the hand of one of the masters of the Supreme Court. It must specify exactly every alteration or correction to be made in pursuance of the judgment or order (*f*). The copy of any such order purporting to be signed by one of the masters is sufficient evidence in all cases without proof of the master's handwriting, and has the like force and effect as any entry made in any list or register of voters above referred to (*g*).

Boon (1871), L. R. 7 C. P. 150, 158 (on the ground of encouragement to appeal by the revising barrister); *Minifie* v. *Banger* (1885), 16 Q. B. D. 302, 304, C. A. (on a like ground); *Hurcum* v. *Hilleary* (1893), Fox & S. Reg. 351, 356 (on the ground of a former decision of the court being in the appellant's favour); *Pickard* v. *Baylis* (1879), Colt. 98, 117; *Jones* v. *Pritchard* (1891), Fox & S. Reg. 259, 265. See also *Webb* v. *Aston* (1843), 5 Man. & G. 14, 32; *Tepper* v. *Nichols* (1864), 18 C. B. (N. S.) 121, 141. Where the court remitted a case to the revising barrister to be restated and the appellant abandoned it, it was held that the respondent was not entitled to costs (*Lawe* v. *Maillard* (1869), L. R. 4 C. P. 547).

(*r*) The revising barrister may, notwithstanding, on a future occasion and between other parties, again raise the question even in relation to the same property qualification (*Roberts* v. *Percival* (1864), 18 C. B. (N. S.) 36); and *semble* the court may overrule its prior decisions if clearly shown to be wrong (*Hadfield's Case* (1873), L. R. 8 C. P. 306, *per* BOVILL, C.J., at p. 311); see also *Kemp* v. *Wanklyn*, [1894] 1 Q. B. 265, 267. But see the Irish case of *Sproule* v. *Buchanan* (1894), 2 Laws. Reg. Cas. 51.

(*s*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 66.

(*t*) If such leave is refused the Court of Appeal may give leave to appeal; see Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1 (5).

(*a*) Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 14.

(*b*) As *Hawke* v. *Dunn*, [1897] 1 Q. B. 579, a criminal case, was overruled in *Powell* v. *Kempton Park Racecourse Co.*, [1899] A. C. 143.

(*c*) But no order of the court for altering the register pursuant to the judgment of the court need be drawn up (*Whitmore* v. *Bedford* (1843), 5 Man. & G. 9, 13, 14).

(*d*) County Electors Act, 1888 (51 & 52 Vict. c. 10), s. 4; compare Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 44.

(*e*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 67; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 35.

(*f*) *Ibid.*

(*g*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 68.

519. The person to whom the notice is so addressed must alter or correct the register or burgess roll accordingly, and sign his name against the alteration or correction, and hand over to his successors in office every such notice with the register or burgess roll (*h*). Altering the register.

Part IV.—The Conduct of an Election.

SECT. 1.—*Parliamentary.*

SUB-SECT. 1.—*The Writ.*

520. The first formal (*i*) step towards the election of a member of Parliament is the issue of the writ (*j*) out of the Crown Office in Chancery (*k*). If a writ is illegally issued, the election following thereon will be void (*l*). When a Parliament is summoned the royal proclamation, issued by the King upon the advice of the Privy Council, requiring the Chancellor to issue the writs is treated in practice as itself affording authority to the Crown Office to issue them (*m*), though theoretically the authority should proceed immediately from the Chancellor (*n*). On this follows what is called a General Election. Issue of writ in general election.

521. When during the life of a Parliament a member dies, or "makes election for another place," or accepts an office, or becomes a peer etc., the Speaker issues his warrant for the issue of a new writ for another election at the vacant place (*o*). This is done upon motion during the session of Parliament (*p*), but during a Issue of writ in bye-election.

(*h*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 67; Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 35. In *Re Eastbourne* (*Town Clerk*), *Ex parte Keay* (1891), 66 L. T. 323, a mandamus against a town clerk to compel him to make an alteration in the burgess roll after publication where names had by mistake been placed in the wrong ward-roll was refused; see also *Re Allen* (1859), 6 C. B. (N. S.) 334.

(*i*) As to when an election "begins" in such a way as to make the parties concerned responsible for breaches of election law, see p. 263, *post*.

(*j*) 4 Co. Inst. 4, 9, 10. As to proof of the writ, see *Reed* v. *Lamb* (1860), 6 H. & N. 75, where, in an action for penalties under the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), the plaintiff gave in evidence a copy of the writ and return from the office of the Clerk of the Crown, certified by a clerk in the office to be a true copy of the original writ and examined therewith. The defendant's counsel allowed this copy to be given in evidence as a certified copy. The court held that, assuming it was not a certified copy, there was no ground for granting a new trial; but CHANNELL, B., guarded himself from saying that parol evidence of an election *de facto* unconnected with any writ would have been sufficient.

(*k*) By virtue of the transfer of powers effected by the Great Seal (Offices) Act, 1874 (37 & 38 Vict. c. 81), s. 5.

(*l*) *Re Cardiff Election* (1661), House of Commons' Journals, 13 Car. 2, 15th June.

(*m*) The practice is so stated by Sir W. Anson, Law and Custom of the Constitution, 3rd ed., Part I., p. 51.

(*n*) 1 Bl. Com. (ed. 1844), p. 177; Orme, Election Laws (ed. 1812), p. 1; and see "An Act for further regulating elections of members to serve in Parliament" etc. stat. (1696) 7 & 8 Will. 3, c. 25, s. 1.

(*o*) 5 Com. Dig., (ed. 1822), tit. Parliament, D 8, where the writer adds: "Though there be a petition depending for the election at the same place, if it be not against him who dies etc."

(*p*) Sir T. Erskine May, Parliamentary Practice, 11th ed., p. 631.

SECT. 1 Parliamentary.

recess is effected by a statutory notice in the *London Gazette* (*q*). Then follows what is called a Bye-election.

SUB-SECT. 2.—*The Returning Officer.*

Delivery of writ to returning officer.

522. There is a "returning officer" in each constituency, to whom the writ is addressed; and the duty of this officer is stated in the writ, namely, that, "notice of the time and place of election having first been duly given, he shall cause election to be made according to law of a member [*or* members] to serve in Parliament for the constituency in question, and that he shall cause the name [*or* names] of such member [*or* members] when so elected, whether he [*or* they] be present or absent, to be certified to His Majesty in his Chancery without delay" (*r*).

The writs must be delivered to the returning officer by the messenger or pursuivant of the Great Seal, or by his deputy, through the medium of the General Post Office (*s*), except when the returning officer is sheriff of London or Middlesex or holds his office within five miles of the metropolis (*a*). The returning officer has from this time forward the conduct of the election (*b*), and the date of the receipt of the writ is shown by his indorsement thereof upon the writ (*c*).

Who is to be the returning officer in a county.

523. The office of "returning officer" is held in a county by the sheriff (*d*). Where the constituency is a division of a county, and the sheriff does not act himself, he may appoint in writing a fit person to be his deputy for all or any of the purposes relating to an election in any such division (*e*).

Writs directed to the sheriff must require him to cause election to be made of a member (or members) to serve in Parliament for his county and for any riding, part, or division thereof only, and not further or otherwise (*f*).

At university elections.

524. The writ for election of a member or members for the Universities of Oxford, Cambridge, and London must be directed to the respective vice-chancellors thereof (*g*).

(*q*) The Recess Elections Act, 1784 (24 Geo. 3, sess. 2, c. 26), s. 2, as amended by the Elections in Recess Act, 1863 (26 & 27 Vict. c. 20), s. 1.

(*r*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. II.

(*s*) Parliamentary Writs Act, 1813 (53 Geo. 3, c. 89), ss. 1—3.

(*a*) *Ibid.* In these cases the writ must be carried to the returning officer direct.

(*b*) Ballot Act, 1872 (35 & 36 Vict. c. 33), *passim.* The returning officer can justify ordering a person who makes a noise and disturbance and obstructs him in the execution of his duty to be taken into custody and carried before a justice of the peace (*Spilsbury* v. *Micklethwaite* (1808), 1 Taunt. 146).

(*c*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. II.

(*d*) 5 Com. Dig. tit. Parliament, D 8. But if the sheriff die before the expiration of his year of office or before he is lawfully superseded, the under-sheriff must execute the office in the name of the deceased sheriff (Sheriffs Act, 1887, (50 & 51 Vict. c. 55), s. 25). If the sheriff be an officer of militia, and his regiment be embodied for actual service, he is personally discharged, and the under-sheriff is answerable for the execution of the office in his name (Militia Act, 1882 (45 & 46 Vict. c. 49), s. 40). See title SHERIFFS AND BAILIFFS.

(*e*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 8.

(*f*) Parliamentary Elections Act, 1853 (16 & 17 Vict. c. 68), s. 1.

(*g*) *Ibid.*; and Representation of the People Act, 1867 (30 & 31 Vict. c. 102),

In parliamentary boroughs.

For those parliamentary boroughs which are neither counties in themselves nor municipal boroughs (*h*), the sheriff for the time being of the county in which any such borough is situate must in the month of March in each year, by writing under his hand, to be delivered to the clerk of the peace of the county within one week and to be by such clerk of the peace filed and preserved with the records of his office, nominate and appoint for each of such boroughs a fit person to be, and such person so nominated and appointed accordingly will be, the returning officer for such borough until the nomination to be made in the succeeding March; and in the event of the death of any such person, or of his becoming incapable to act by reason of sickness or other sufficient impediment, the sheriff for the time being must, on notice thereof, forthwith nominate and appoint in his stead a fit person to be, and such person so nominated and appointed will accordingly be, the returning officer for such borough for the remainder of the current year (*i*). No person so nominated and appointed as returning officer for any such borough can be compelled to serve a second time (*k*).

No person in holy orders, nor any churchwarden or overseer of the poor within any such borough, is to be nominated or appointed as returning officer for the same; and no person nominated or appointed as returning officer for any borough is to be appointed a churchwarden or overseer of the poor therein during the time for which he is such returning officer. Again, no person qualified to be elected to serve as a member of Parliament can be compelled to serve as returning officer for any borough for which he has been nominated or appointed by the sheriff as aforesaid, if within one week after he has received notice of his nomination or appointment as returning officer he makes oath of such qualification before any justice of the peace and forthwith notifies the same to the sheriff (*l*).

In divided boroughs.

525. When a parliamentary borough is divided into divisions, the returning officer for such borough is the returning officer for each division, and may, by writing under his hand, appoint a fit person to be his deputy for all or any of the purposes relating to a parliamentary election in any such division, and anything in relation to a parliamentary election authorised or required to be done by, to, or before the returning officer (except the fixing of the day for taking the polls), may be done by, to, or before the returning officer himself or such deputy (*m*).

s. 41. The returning officers for the Scotch universities may be found by reference to the Representation of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48), s. 37. As to the University of Dublin, it is to be implied from the University Elections Act, 1861 (24 & 25 Vict. c. 53), s. 2, that the provost is to execute the office.

(*h*) *E.g.*, the metropolitan parliamentary boroughs, which are unaffected by the London Government Act, 1899 (62 & 63 Vict. c. 14).

(*i*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 11.

(*k*) This is the more important as the office is without remuneration (*Re Shoreditch Parliamentary Election, Ex parte Walker* (1887), 56 L. T. 529).

(*l*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 11.

(*m*) Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), s. 13.

SECT. 1. Parliamentary.

In counties of towns, and municipal boroughs.

526. Some cities or towns are counties of themselves (*n*), and in these the sheriff is the returning officer (*o*). In all other municipal (*p*) boroughs (*q*) the mayor is the returning officer (*r*), and if there are more mayors than one within the boundaries of a parliamentary borough (*a*), the mayor of that borough to which the writ of election is directed (*b*) is the returning officer (*c*). If, when a mayor is required to act as returning officer, that mayor is absent or incapable of acting, or if there is no mayor, the council must forthwith choose an alderman to be returning officer (*d*).

Wrong returning officer.

527. If the wrong person acts as returning officer, the election will be void (*e*).

No fees etc. to be taken.

528. Neither the sheriff nor his under-sheriff in any county or city, nor the mayor, bailiff, constable, portreeve, or other officer or officers of any borough, town corporate, port, or place, to whom the execution of any writ or precept for electing members to serve in Parliament belongs or appertains, must give, pay, receive, or take any fee, reward, or gratuity whatsoever for the making out,

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 244 (1). The parliamentary boroughs which are counties of themselves are London, Bristol, Canterbury, Chester, Exeter, Gloucester, Kingston-upon-Hull, Lincoln, Newcastle-upon-Tyne, Norwich, Nottingham, Southampton, Worcester, and York.

(*o*) In the event of the incapacity of the sheriff of a county of a city or a county of a town, the council of the said city or town must forthwith appoint another person to execute the office (Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 36 (1)).

(*p*) But all boroughs are not municipal. See note (*h*), p. 259, *ante*.

(*q*) The Act excepts Berwick-on-Tweed, which had been disfranchised by the Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), s. 2. There would, of course, be no returning officer in a disfranchised constituency.

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 244 (1). Compare the definition of "borough," *ibid.*, s. 7.

(*a*) *I.e.*, in a district borough consisting of more than one municipal borough, *e.g.*, that of Warwick and Leamington.

(*b*) In any such case the writ of election must be directed to the mayor of that one of the municipal boroughs to the mayor of which the writ was directed before the passing of the Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), or if it has not been directed to any such mayor, then to the mayor of that one of the municipal boroughs which has the largest population according to the last census for the time being. See the statute just referred to, s. 12 (5).

(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 244 (2).

(*d*) *Ibid.*, s. 244 (3). But whenever there is no person duly qualified in any borough to perform the duties of a returning officer for the same, the sheriff of the county in which such borough is situate is to be charged with the execution of the writ, and is to execute the same and in all respects perform the duties of and incidental to the office of the returning officer. But it is not lawful for the sheriff to receive or execute the writ except where there is no person within such borough legally qualified and competent as returning officer to execute the same (Returning Officers Act, 1854 (17 & 18 Vict. c. 57), s. 1). Therefore since the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), this power of the sheriff is not likely to be important; but in case of an *impasse* of any description it might still be invoked.

(*e*) So at least it was held by a parliamentary committee in the *Wakefield Case* (1842), Bar. & Aust. 270, where the resignation of the person appointed by the sheriff to act as returning officer under the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 11, was in all the circumstances held illegal. But it is to be noted that the person who had been duly nominated and appointed as returning officer was himself a candidate and as sitting member was respondent to the petition.

receipt, delivery, return, or execution of any such writ or precept (*f*).

Duties of the returning officer.

529. The returning officer has various duties cast upon him as to carrying out the election (*g*); statutory rules are prescribed which he must follow (*h*); and statutory forms are provided which he must use in issuing the necessary documents (*i*). But no election is to be declared invalid by reason of a non-compliance with such rules or any mistake in the use of such forms, if it appears to the tribunal having cognisance of the question that the election was conducted in accordance with the principles laid down in the body of the Ballot Act, 1872, and that such non-compliance or mistake did not affect the result of the election (*k*). Otherwise such non-compliance or mistake would be liable to defeat the election, unless the petitioner were estopped by his own conduct from taking advantage thereof (*l*).

SUB-SECT. 3.—*Notice of Election.*

Notice of election.

530. The returning officer in a county election must within two days after the day upon which he receives the writ, and in the case of a borough election on the day on which he receives the writ or the following day, give public notice, between the hours of nine in the morning and four in the afternoon, of the day on which and place at which he will proceed to an election, and of the time appointed for the election, and of the day on which the poll will be taken in case the election is contested, and of the time and place at which forms of nomination papers may be obtained, and in the case of a county election must send one of such notices by post, free of charge, under cover, to the postmaster of the principal post-office of each polling place in the county indorsed with the words "Notice of Election"; and the postmaster receiving the same must forthwith publish it in the manner in which post-office notices are usually published (*m*).

Day of election.

531. The day of election must be fixed by the returning officer, in the case of an election for a county or district borough not later than the ninth day after the day on which he receives

(*f*) "An Act for further regulating elections of members to serve in Parliament etc." stat. (1696) 7 & 8 Will. 3, c. 25, s. 2. The sheriff etc. for every wilful offence against this enactment forfeits to every party so aggrieved the sum of £500, to be recovered by him or them, his or their executors or administrators, together with full costs of suit (*ibid.*, s. 6).

(*g*) Ballot Act, 1872 (35 & 36 Vict. c. 33), *passim*.

(*h*) *Ibid.*, s. 28, and Sched. I., Part II.

(*i*) *Ibid.*, s. 28, and Sched. II. "The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law" (note to schedule).

(*k*) *Ibid.*, s. 13. Compare *Greenock Case* (1869), 1 O'M. & H. 247, 250, 251, where there was an irregularity in the appointments made by the sheriff as to polling places. This was before the Act.

(*l*) *East Clare Case* (1892), Day, 161.

(*m*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 28, and Sched. I., Part I., r. 1. See title POST OFFICE.

SECT. 1. Parliamentary.

the writ, with an interval of not less than three clear days between the day on which he gives the notice and the day of election; and in the case of an election for any borough other than a district borough (*n*) not later than the fourth day after the day on which he receives the writ, with an interval of not less than two clear days between the day on which he gives the notice and the day of election (*o*). In reckoning time for these purposes Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving are to be excluded, and where anything is required to be done on any day which falls on one of the above-mentioned days, such thing may be done on the next day, unless it is one of the days excluded as above mentioned (*p*).

Place of election.

532. The place of election is to be a convenient room in the town appointed by law (*q*) for the purpose, or if there be no such town, then in such town in the county as the returning officer may from time to time determine as being in his opinion most convenient for the electors (*r*).

Time of election

533. The time appointed for the election is to be such two hours between the hours of ten in the forenoon and three in the afternoon as may be appointed by the returning officer, and the returning officer must attend during those two hours and for one hour after (*s*).

University elections.

534. The foregoing provisions as to notice of election do not apply to the universities (*t*). In the case of the Universities of Oxford and Cambridge, the vice-chancellor of the university (*a*) must upon the receipt of precepts for the election of members forthwith cause public notice to be given of the time and place of election, and must proceed to election thereupon within the space of eight days next after the receipt of the precept, and give four days' notice at least of the day appointed for the election (*b*).

(*n*) A district borough consisting of more than one municipal borough, *e.g.*, Warwick and Leamington.

(*o*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 28, and Sched. I., Part I., r. 2.

(*p*) *Ibid.*, s. 28, and Sched. I., Part I., r. 56. See title TIME.

(*q*) In some cases particular towns are specifically named by statute for the purpose; *e.g.*, see "An Act concerning the Laws to be used in Wales," stat. (1535) 27 Hen. 8, c. 26, and Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 16. In divisions of counties the county council has the power of appointing the place of election, and in default of any determination by them the returning officer may determine it. The place is to be that which in his or their opinion is the most convenient for the purposes of the election (Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), s. 16 (1); Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (xii.); and compare Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 18). In the case of a parliamentary borough or any division of a parliamentary borough the place of election is to be such room or rooms in the said borough as the returning officer may from time to time determine as being in his opinion the most convenient for the purposes of the election (Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), s. 16 (2)).

(*r*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 28, and Sched. I., Part I., r. 3.

(*s*) *Ibid.*, s. 28, and Sched. I., Part I., r. 4.

(*t*) *Ibid.*, s. 31.

(*a*) See p. 258, *ante*.

(*b*) "An Act for further regulating the election of members to serve in Parliament etc." stat. (1696) 7 & 8 Will. 3, c. 25, s. 1, which still applies to the Universities of Oxford and Cambridge, as these are not covered for this purpose by the Ballot Act, 1872 (35 & 36 Vict. c. 33).

All notices to be given of the time and place of any election must be publicly given at the usual place or places within the hours of eight in the forenoon and four in the afternoon from the 25th day of October to the 25th day of March inclusive, and within the hours of eight in the forenoon and six in the afternoon from the 25th day of March to the 25th day of October, and not otherwise. No notice will be valid and published which is not so made (*c*).

In the case of the University of London the vice-chancellor must proceed to election within six days' after the receipt of the writ, giving three clear days' notice of the day and place of election, exclusive of the day of proclamation and the day of election (*d*).

SUB-SECT. 4.—*Commencement of the Election.*

When the election begins.

535. Although the first formal step in every election is the issue of the writ (*e*), the election is considered for some purposes (*f*) to begin at an earlier date. It is a question of fact in each case when an election begins (*g*) in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is "reasonably imminent" (*h*). Neither the issue of the writ (*i*) nor the publication of the notice of election (*k*) can be looked to as fixing the date when an election begins from this point of view (*l*). Nor, again, does the nomination day (*m*)

(*c*) Parliamentary Elections Act, 1793 (33 Geo. 3, c. 64), s. 1, which still applies to the Universities of Oxford and Cambridge for the same reason as that given in the preceding note.

(*d*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 42. As to the Scotch universities, see Representation of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48), s. 37.

(*e*) See p. 257, *ante*.

(*f*) It is often important in cases arising under the law of parliamentary election, *e.g.*, in cases of corrupt and illegal practices under the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), to say when an election begins. That statute contains frequent references to "during the election."

(*g*) *Kennington Case* (1886), 4 O'M. & H. 93.

(*h*) *Elgin and Nairn Case* (1895), 5 O'M. & H. 1, 2—13. The election must not be *in nubibus*, but reasonably imminent. The legislature had in view a period not at least much anterior to the group or series of events which immediately precede the nomination. Instances are given of a vote adverse to the Ministry or canvassing commenced by a candidate when political sagacity tells him that a general election is imminent (*ibid.*). This is a Scotch case, but it has been approved by POLLOCK, B., in the *Lichfield Division Case* (1895), 5 O'M. & H. 27, 35, and by LAWRANCE, J., in the *Maidstone Borough Case* (1906), 5 O'M. & H. 200, 210; and although GRANTHAM, J., in the *Great Yarmouth Borough Case* (1906), 5 O'M. & H. 176, 192, disapproved of it, yet that judge in a series of cases expressed views on this subject which admittedly disagreed with the *dicta* of many previous courts. See *Maidstone Borough Case, supra*, at p. 201; *Bodmin Division Case* (1906), 5 O'M. & H. 225; and *Great Yarmouth Borough Case, supra*. It is a man's own choice when he issues his challenge and commences his candidature (*Lichfield Division Case, supra*). An absolute stranger coming to the district in which the election is held will be more readily judged to have commenced a candidature by holding meetings, and so forth, than one who lives in the neighbourhood (*Lancaster Division Case* (1896), 5 O'M. & H. 39).

(*i*) See p. 257, *ante*.

(*k*) See p. 261, *ante*.

(*l*) *Elgin and Nairn Case* (1895), 5 O'M. & H. 1, 2—13.

(*m*) See p. 273, *post*.

SECT. 1. Parliamentary.

afford any criterion (*n*). The election will usually begin at least earlier than the issue of the writ (*o*). The question when an election begins must be carefully distinguished from that as to when "the conduct and management of" an election may be said to begin (*p*). Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case (*q*).

SUB-SECT. 5.—*Candidates.*

Meaning of "candidate."

536. A person seeking to be elected is called a candidate (*r*), and in law no one is entitled to be a candidate at a parliamentary election unless he is duly qualified according to law to be a member of Parliament (*s*). But a person who is not qualified to be elected may in fact be a candidate, with the responsibilities and rights attaching to the position (*t*). The question who is a candidate at a parliamentary election is of importance, chiefly for the purpose of deciding whether the person concerned comes within the provisions of the Acts for the prevention of corrupt and illegal practices (*a*), so far as those provisions relate to the responsibility of a candidate. In these Acts the expressions "candidate at an election" and "candidate" respectively mean, unless the context otherwise requires, any person elected to serve in Parliament at such election, and any person who is nominated as a candidate at such election, or is declared by himself or by others to be a candidate on or after the day of the issue of the writ for such election, and after the dissolution or vacancy in consequence of which such writ has been

(*n*) *Walsall Borough Case* (1892), 4 O'M. & H. 123, 125.

(*o*) *Elgin and Nairn Case, supra.*

(*p*) *Great Yarmouth Borough Case* (1906), 5 O'M. & H. 176, 189. See note (*h*), p. 263, *ante*, as to the observations of GRANTHAM, J., in that case. "From the time when a man becomes the adopted candidate he is in a position in which he may incur expenses for the conduct and management of the election which is still in the future; but it does not at all follow that all the expenses which he incurs because he is a candidate, and which he would not incur if he were not a candidate, and which, in one sense, therefore have a reference to that election which is still in the future, are expenses incurred in the conduct and management of the election. They may possibly be, but they are not by any means necessarily so" (*per* CHANNELL, J., *ibid.*; compare *Walsall Borough Case* (1892), 4 O'M. & H. 121, 125). But if a man begins to incur expenses before the dissolution or the issue of the writ, these expenses must be returned as having been incurred "on account of the conduct or management of the election" within the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 8 (1).

(*q*) See the definition of a candidate in the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 63; and compare *Norwich Case* (1886), 4 O'M. & H. 84. See p. 265, *post*, and title PARLIAMENT.

(*r*) The various franchises described in Part II. only come into operation for the purpose of being exercised at an election where more persons are seeking to be elected than there are seats to be filled. "Candidates are persons offering themselves to the suffrages of the electors" (*per* Lord ELLENBOROUGH, C.J., in *Morris* v. *Burdett* (1813), 2 M. & S. 212).

(*s*) For the qualifications and disqualifications of members of Parliament, see title PARLIAMENT. For the law as to the withdrawal or death of a candidate, see pp. 276, 302, *post*.

(*t*) *Harford* v. *Linksey*, [1899] 1 Q. B. 852.

(*a*) See Representation of the People Act, 1867 (30 & 31 Vict. c. 102), ss. 11, 49, 50; Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 65 (1), and Sched. III.; and Corrupt and Illegal Practices Prevention Act, 1895 (58 & 59 Vict. c. 40), s. 5.

issued (*b*). But when a person has been nominated or declared, without his consent, nothing in the Acts is to be construed to impose any liability on that person, unless he has afterwards given his assent to such nomination or declaration or has been elected (*c*). Also, if he is nominated or declared, either without his consent or in his absence, and takes no part in the election, he may, if he thinks fit, make a declaration respecting election expenses in a prescribed form (*d*), to the effect that he was nominated or declared in his absence and took no part in the election; that neither he nor anyone on his behalf has made any payment or incurred any liability in respect of the conduct of the election; that he has not paid any money nor given any security or other consideration to any person acting as his election agent; that he is entirely ignorant of any money having been paid by anyone for the purposes of the election; and that he will not in the future make any payment for such purposes (*e*). If this declaration is made it becomes the duty of the election agent, so far as circumstances admit, to comply with the statutory provisions with respect to expenses incurred on account of and in respect of the conduct or management of the election in like manner as if the candidate had been nominated or declared with his consent (*f*). A candidate after nomination may withdraw, or be withdrawn if he be out of the United Kingdom, within the time appointed for the election (*g*). If a person with the intention of becoming a candidate commits illegal acts before any dissolution or vacancy, but is in fact neither nominated nor declared to be a candidate after the writ has been issued or after the occurrence of the dissolution or vacancy, he cannot be responsible as a candidate (*h*).

When candidature commences.

537. Having become a candidate, it is often of great importance to ascertain the date upon which the person's candidature commences, so as to fix the commencement of his responsibility. A person may become a candidate within the meaning of the Acts referred to before a vacancy occurs, or the dissolution of Parliament, or the issue of a writ (*i*), and before being accepted as a candidate by any political association (*k*). But a person does not necessarily become a candidate when he forms the intention to become a candidate (*l*). He may, however, become a candidate as soon as he begins to incur any expenses on account of an election (*m*). An

(*b*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 63 (1).
(*c*) *Ibid.*, s. 63 (2) (a).
(*d*) *Ibid.*, Sched. II., Part II.
(*e*) *Ibid.*, s. 63 (2) (b).
(*f*) *Ibid.*; see p. 273, *post*.
(*g*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 1; see p. 276, *post*.
(*h*) *Youghal Case* (1869), 1 O'M. & H. 291.
(*i*) *Norwich Case* (1886), 4 O'M. & H. 84; *Montgomery Boroughs Case* (1892), 4 O'M. & H. 167; see also p. 263, *ante*.
(*k*) *Stepney Case* (1886), 4 O'M. & H. 34. The date on which a candidate is selected by a political association is relevant to prove when the person selected becomes a candidate (*Great Yarmouth Borough Case* (1906), 5 O'M. & H. 176).
(*l*) See *Malcolm* v. *Parry* (*2nd Case*) (1875), L. R. 10 C. P. 168.
(*m*) *Rochester Borough Case* (1892), 4 O'M. & H. 156; *Maidstone Borough Case*

SECT. 1. Parliamentary.

"election" means a definite election within the knowledge and contemplation of the candidate, although the date of such election may be quite uncertain (*n*). The period, however, during which a person should be held responsible as a candidate must be confined within reasonable limits of time (*o*); but the actual date upon which an election was fixed is immaterial, and an earlier date may be taken as the commencement of a person's candidature, and it depends on the circumstances and facts of each case how far back that date may be (*p*). The question of the date of commencement must depend on facts existing on that date; it cannot depend on *ex post facto* circumstances (*q*). Thus, the expenses of obtaining a candidate, or of inducing an individual to become a candidate, are very different from the expenses of procuring his election when obtained (*r*); but if the nominal object of expenses were to obtain a candidate, while the real object was to promote the election of an individual, the expenses would be within the Act (*s*).

SUB-SECT. 6.—*Appointment of the Election Agent and Sub-agents.*

Appointment of election agent.

538. On or before the day of nomination a person, who should be a respectable and responsible man, responsible to

(1906), 5 O'M. & H. 200. In the *Maidstone Borough Case* and also in the *Bodmin Division Case* (1906), 5 O'M. & H. 225, GRANTHAM, J., differed from his colleagues and from many authorities on this point. As to what are expenses incurred on account of an election, see pp. 295, 335, *post*.

(*n*) *Lichfield Division Case* (1895), 5 O'M. & H. 27; *Elgin and Nairn Case* (1895), 5 O'M. & H. 1.

(*o*) "The period during which a candidate can be held responsible for the illegal and injudicious acts of his recognised supporters must be confined within reasonable limits. It would not be reasonable to say that a man who contemplates in the year 1892 becoming a candidate in 1896 could not legally employ a person to do for him a variety of acts to ingratiate him with those whose votes and suffrages he intended to seek in some future year" (*per* HAWKINS, J., in *Walsall Borough Case* (1892), 4 O'M. & H. 123); see *Kennington Division Case* (1886), 4 O'M. & H. 93.

(*p*) *Lancaster Division Case* (1896), 5 O'M. & H. 39. How far back it is necessary to go must depend, *inter alia*, on the candidate's position in the constituency or neighbourhood. The actions and expenses of a man living in a district, or whose parents live in the district, or who is an employer of labour there, are not to be regarded from the same standpoint as the actions and expenses of a stranger coming into the district with the view of ultimately representing it in Parliament. The latter person may be a candidate as soon as he begins to spend money and allows it to be known that he intends to stand, although no election is actually pending; see *per* POLLOCK, B., *ibid.*; see also *Lichfield Division Case, supra*.

(*q*) *Lancaster Division Case, supra*. A political association may spend large sums in order to further the interests of whatever person they shall ultimately decide to support, without making any individual responsible as a candidate (*Lichfield Division Case, supra*); see also the *Boston Borough Case* (1874), 2 O'M. & H. 161.

(*r*) *Norwich Case* (1886), 4 O'M. & H. 84, where a party meeting was held on 21st September before the respondent had consented to stand and a resolution passed that a requisition should be got up requesting the respondent to be a candidate. After this, persons were employed to obtain signatures to the requisition; and on 12th October a second meeting was held, at which the respondent was requested to stand and consented. It was held that the expenses of the two meetings were not expenses which the respondent ought to have returned as election expenses.

(*s*) *Ibid.*

the candidate and to the public (*t*), must be named by or on behalf of each candidate as his "election agent" for such election (*u*). A candidate may name himself as election agent, and he will in that case be responsible as such (*x*). On or before the day of nomination the name and address of the election agent must be declared in writing by the candidate or some other person on his behalf to the returning officer, and the returning officer must forthwith give public notice of the name and address of every election agent so declared (*a*).

One election agent only is to be appointed for each candidate: but the appointment, whether the election agent appointed be the candidate himself or not, may be revoked; and in the event of such revocation or of the death of the appointed agent, whether such event is before, during, or after the election, then forthwith another election agent must be appointed, and his name and address declared in writing to the returning officer, who must forthwith give public notice of the same (*b*). The one election agent so appointed may legally be employed for payment (*c*).

Sub-agents.

539. In counties one sub-agent, who may be paid (*d*), may be appointed by the election agent to act within each "polling district" (*e*). As regards matters in a polling district, the election agent may act by the sub-agent for that district; and the responsibility of the latter and that of the candidate for his acts will be the same as in the case of an election agent (*f*).

One clear day before the polling the election agent must declare in writing the name and address of every sub-agent to the returning officer, and the returning officer must forthwith give public notice of the name and address of every sub-agent so declared (*g*).

The appointment of a sub-agent is not vacated by the election agent who appointed him ceasing to be election agent, but may be revoked by the election agent for the time being of the candidate; and in the event of such revocation or of the death of a sub-agent another sub-agent may be appointed, and his name and address forthwith declared in writing to the returning officer, who must forthwith give public notice of the same (*h*).

There are no sub-agents in borough elections (*i*).

Election agent's office.

540. An election agent at an election for a county or borough must have within the county or borough or within any county of a

(*t*) *Barrow-in-Furness Case* (1886), 4 O'M. & H. 76, *per* FIELD, J., at p. 82.
(*u*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 24 (1).
(*x*) *Ibid.*, s. 24 (2).
(*a*) *Ibid.*, s. 24 (3).
(*b*) *Ibid.*, s. 24 (4).
(*c*) *Ibid.*, Sched. I., Part I. (1). If the election agent is a person in the employ of the candidate, it will be a question of fact whether there was a contract to pay him as election agent (*Hartlepool Case* (1910), *Times*, 4th May).
(*d*) *Ibid.*, Sched. I., Part I. (2)
(*e*) *Ibid.*, s. 25 (1). As to what is a polling district, see p. 308, *post*.
(*f*) *Ibid.*, s. 25 (2).
(*g*) *Ibid.*, s. 25 (3).
(*h*) *Ibid.*, s. 25 (4).
(*i*) *Ibid.*, s. 25, and Sched. I., Part I. (2).

SECT. 1. Parliamentary.

city or town adjoining thereto, and a sub-agent must have in his district or within any county of a city or town adjoining thereto, an office or place to which all claims, notices, writs, summonses, and documents may be sent, and the address of such office or place must be declared at the same time as the appointment of the said agent to the returning officer, and must be stated in the public notice of the name of the agent (*k*).

Any claim, notice, writ, summons, or document delivered at such office or place and addressed to the election agent or sub-agent, as the case may be, is deemed to have been served on him; and every such agent may in respect of any matter connected with the election in which he is acting be sued in any court having jurisdiction in the county or borough in which the said office or place is situate (*l*).

541. A paid election agent or sub-agent may not vote (*m*).

SUB-SECT. 7.—*Assistants, Workers and Agents.*

Assistants and workers.

542. Besides the election agent and (in the case of counties) his sub-agents, a candidate is allowed to have a limited number of paid assistants (*n*), who may be electors, but may not vote (*o*), and whose parents, if such assistants are infants, are likewise prohibited from voting (*p*), but who are not necessarily agents, for whom the candidate is responsible (though they may be such), and an unlimited number of unpaid workers or helpers, who may vote, and as to whom it will in each case be a question of fact whether they have been employed to such an extent as to make them in all the circumstances agents for whom the candidate is responsible (*q*).

Polling agents, clerks and messengers.

543. One polling agent in each polling station, and no more, may be legally employed for payment (*r*).

In a borough one paid clerk (*s*) and one paid messenger may be

(*k*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 26 (1).

(*l*) *Ibid.*, s. 26 (2).

(*m*) *Ibid.*, Sched. I., Part I. (7). Compare Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 11.

(*n*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), Sched. I., Part I. Persons who are not employed to render personal service in furtherance of the election of a candidate, but merely to do ordinary work ancillary thereto, such as preparing a room for a meeting etc., are not within this provision (*Central Finsbury Division Case* (1892), 4 O'M. & H. 171, 177).

(*o*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), Sched. I., Part I. (7). An honorarium paid after the election to one who had been a volunteer at the time, and had voted believing himself to be such, was held illegal (*South-west Essex Case* (1886), 2 T. L. R. 388).

But if once a person is employed for payment in some capacity at an election, there is no restriction on the right of that person to render services to the candidate such as he may think fitting, except that he cannot be employed in the payment of election expenses, unless he is a sub-agent (*Elgin and Nairn Case* (1895), 5 O'M. & H. 1, 13).

(*p*) *Stepney Case* (1886), 4 O'M. & H. 34, 39.

(*q*) "Upon the common-sense, broad view of it" (*Bewdley Case* (1869), 1 O'M. & H. 16, 18).

(*r*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), Sched. I., Part I. (3).

(*s*) Where the election agent was a solicitor, and he employed one of his regular clerks, paying him no additional salary, for work in connection with the election, the court held that he was not a "clerk" who must be reckoned for this purpose

legally employed for payment for every five hundred electors in the borough (*t*).

In a county one clerk (*a*) and one messenger may legally be employed for payment for the central committee room, or if the number of electors in the county exceeds five thousand, then a number of clerks and messengers not exceeding in number one clerk and one messenger for every five thousand electors in the county; and there may also be employed for payment a number of clerks and messengers not exceeding in number one clerk and one messenger for each polling district in the county, or where the number of electors in a polling district exceeds five hundred one clerk and one messenger for every five hundred electors in the polling district (*b*). The number of clerks and messengers so allowed in any county may be employed in any polling district where their services may be required (*c*).

No provision is made for the employment and payment by the candidate of persons to keep the peace and protect property at the time of an election (*d*).

Unpaid workers.

544. Although there is no statutory limit in respect of the unpaid workers and agents of a candidate, he is responsible for care in the selection of suitable persons and for supervision of their conduct on his behalf (*e*).

A candidate's liability under the "parliamentary common law of agency" (*f*) depends upon a peculiar principle special to this

(*Buckrose Division Case* (1886), 4 O'M. & H. 110, 116). "Pilots," within the limited number, may be classed as messengers (*Hartlepool Case* (1910), *Times*, 4th May).

(*t*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), Sched. I., Part I. (4).

(*a*) See note (*s*), p. 268, *ante*.

(*b*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), Sched. I., Part I. (5). In either boroughs or counties, if there be a number of electors in excess of a multiple of five hundred or five thousand, as the case may be, one paid clerk and one paid messenger may be appointed in respect thereof (*ibid.*). As to what is a polling district, see p. 308, *post*.

(*c*) *Ibid.*, Sched. I., Part I. (6).

(*d*) The greatest caution should be used before such employment and payment is resorted to by private persons, the proper course being to apply to the magistrates and police authorities where reasonable fear exists (*Rigden* v. *Passmore Edwards* (1880), 44 L. T. 192). Where money was paid by an agent of the candidate in order to enable men to be hired for keeping order at one of the meetings held by that candidate, this was held to be an illegal practice within the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 28. Volunteers may be employed to keep order, and where serious disorder is apprehended, it may be wise to swear in such volunteers as special constables (*Ipswich Case* (1886), 4 O'M. & H. 70, 74).

(*e*) "Let the candidate feel," said VAUGHAN WILLIAMS, J., "that if he personally avoids corruption, and carefully chooses his agents, and carefully supervises their conduct on his behalf, he will not suffer the consequences of the misconduct of others" (*Hexham Case* (1892), shorthand notes of judgment, published as Parliamentary Paper No. 25 of 1893, at p. 11).

(*f*) It was enacted by the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 26, that, save as otherwise provided by rules, the principles, practice, and rules on which committees of the House of Commons had theretofore acted in dealing with election petitions should be observed, so far as might be, by the court and judge in the case of election petitions under that Act. Hence it has come about that the principle under discussion, originating in parliamentary committees, has been grafted on the common law.

SECT. 1. Parliamentary.

Agency.

matter and distinct from the principles prevailing in the criminal or civil (*g*) law of agency. The candidate's liability under this principle may extend to the acts of every person who is *de facto* a member of the staff which is conducting the election and whose services are directly or indirectly recognised or made use of by the candidate or his election agent, whether such person be paid or unpaid (*h*).

The crucial test is whether there has been employment or

(*g*) "There are three princpiles, applicable to three kinds of matters. There is, first of all, the strictest of all principles, that which is applicable to a criminal charge, and there a man is responsible for nothing at all except his own individual guilt. There is then the principle that is applicable to actions of a civil kind raised against a party on the ground of a wrong done, and in which it is proved that the wrong was done by the defender's agent—*i.e.*, a person employed by the defender while he was doing the thing which he was employed to do; but then there comes in the principle that he was employed to do the particular work, and that he was not employed to do the wrong. Then there is the third class of cases, with which we are at present engaged, where in these election petitions, it being proved that a candidate is having his election carried on by a committee or by certain canvassers, those canvassers do something which, if the candidate is responsible for it, will invalidate the election; and it is held that he is responsible for it in the sense of making the validity of the election depend on it" (*per* Lord BARCAPLE, *Greenock Case* (1869), 1 O'M. & H. 247, 251; approved by BLACKBURN, J., in *North Norfolk Case* (1869), 1 O'M. & H. 236, 238, 240. Compare, for the responsibility of a candidate for penalties for bribery under the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 2, *Cooper* v. *Slade* (1858), 27 L. J. (Q. B.) 449, judgments in the House of Lords, at p. 462).

(*h*) *Norwich Case* (1869), 1 O'M. & H. 8, 10; *Greenock Case, supra; North Norfolk Case, supra.* The principle is similar to that which prevails in the law of master and servant (*Norwich Case, supra; Westminster Case* (1869), 1 O'M. & H. 87, 95; *Aylesbury Case* (1886), 4 O'M. & H. 59, 62). And even the express prohibition by the candidate of the act in question does not prevent the agency in case of disobedience (*Taunton Case* (1869), 1 O'M. & H. 181, 182; *Barnstaple Case* (1874), 2 O'M. & H. 105). The candidate has been compared in several cases to a yachtsman who is responsible in a yacht race for the conduct of every person who is *de facto* on board his vessel (*Westbury Case* (1869), 1 O'M. & H. 47, 55; *Tamworth Case* (1869), 1 O'M. & H. 75, 81; *Coventry Case* (1869), 1 O'M. & H. 97, 107; *Blackburn Case* (1869), 1 O'M. & H. 198, 202; *Wigan Case* (1881), 4 O'M. & H. 1, 11). An agent may turn an innocent act into a guilty act by the manner of his doing it, as, for instance, where the candidate intended a distribution of coals simply as a charity to the poor, but the agent added cards with the candidate's compliments, which cards also bore the name of the person who eventually became the candidate's agent for the purpose of election expenses (*Boston Case* (1874), 2 O'M. & H. 161, 166). The mere fact, however, that a candidate has not interfered to prevent the act is not enough to render him liable if agency is not otherwise established (*Wigan Case* (1869), 1 O'M. & H. 188, 192). An absolute refusal by a candidate to employ a person as his agent will not necessarily prevent him from being an agent (*Stroud Case* (1874), 3 O'M. & H. 7, 11). All the circumstances of the case must be taken into consideration; and the evidence may be regarded cumulatively as establishing the agency (*Bewdley Case* (1869), 1 O'M. & H. 16, 18; *Staleybridge Case* (1869), 1 O'M. & H. 66, 70; *Wakefield Case* (1874), 2 O'M. & H. 100, 102; *Tewkesbury Case* (1880), 3 O'M. & H. 97, 99; *Bridgewater Case* (1869), 1 O'M. & H. 112, 115; *Taunton Case, supra; Hereford Case* (1869), 1 O'M. & H. 194, 195). If the candidate be shown to be honest, the agency will have to be very clearly shown (*Wigan Case, supra; Westminster Case, supra*). So, again, if the act is isolated (*Hastings Case* (1869), 1 O'M. & H. 217, 219). But a candidate must not take the benefit of a man's services and repudiate them at the same time (*Barnstaple Case, supra; Greenock Case, supra; Staleybridge Case, supra.*

authorisation of the agent by the candidate to do some election work, or the adoption of his work when done (*i*).

If a material part of the business of the election which is supposed to be performed by the candidate himself has been intrusted to another person, that person will, *primâ facie* at least, be an agent (*j*). But every supporter is not an agent (*k*); and all the circumstances, including the amount of care exercised by the candidate in selection and supervision of his agents (*l*), must be weighed in each case (*m*).

A candidate's wife, if she interferes in an election, is *ipso facto* his agent (*n*). There are degrees of agency (*o*), and a man may

(*i*) *Great Yarmouth Borough Case* (1906), 5 O'M. & H. 176, *per* CHANNELL, J., at p. 189.

(*j*) *Dungannon Case* (1880), 3 O'M. & H. 101; *Wakefield Case* (1874), 2 O'M. & H. 100, 102; *Aylesbury Case* (1886), 4 O'M. & H. 59, 62.

(*k*) *Galway Case* (1874), 2 O'M. & H. 196, 200. A land agent is not necessarily an agent in election matters (*Tamworth Case* (1869), 1 O'M. & H. 75, 82); nor is any employment in election business necessarily enough to make the employee an agent (*Windsor Case* (1869), 1 O'M. & H. 1, 3). Compare *Londonderry Case* (1869), 1 O'M. & H. 274, 278; *Salford Case* (1869), 1 O'M. & H. 133, 136; *Hartlepool Case* (1910), *Times*, 4th May. In the last case connection established between a supporter and the committee room was held to be proof of agency.

(*l*) *Hexham Case* (1892), shorthand notes of judgment, published as a Parliamentary Paper, No. 25 of 1893.

(*m*) The exact effect of a letter from the candidate inviting assistance will depend upon the particular circumstances; but proof of such a letter is a considerable step towards the establishing of agency (*Blackburn Case* (1869), 1 O'M. & H. 198, 200; *Galway Case* (1872), 2 O'M. & H. 46, 53; *Norwich Case* (1886), 4 O'M. & H. 84, 89). Agency at a previous election is some evidence of agency at a subsequent election (*Waterford Case* (1870), 2 O'M. & H. 1, 2). So is the fact that the person is agent to another candidate who has coa'esced with the candidate in question (*Norwich Case* (1871), 2 O'M. & H. 38, 39). But the mere fact of the joint candidature is not conclusive if the candidate in question is innocent and unsuspicious of the wrong (*Malcolm* v. *Parry* (*2nd Case*) (1875), L. R. 10 C. P. 168). A man who was given *carte blanche* by the candidate to spend money was held by that fact to have been constituted an agent to a very full extent (*Bewdley Case* (1869), 1 O'M. & H. 16, 19); but see now the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 28, as to payments not made by or through the election agent. Where the petitioner's supporters told an admitted agent of the respondent that a particular person was bribing in respondent's interest, and that person was allowed to continue driving voters to the poll, GRANTHAM, J., and CHANNELL, J., differed as to whether this person was an agent, the former holding that he was not an agent, but the latter thinking that he was an agent (*Great Yarmouth Borough Case*, *supra*). It is suggested by the judgment of POLLOCK, B., in the *Sunderland Borough Case* (1896), 5 O'M. & H. 53, that if the candidate's election agent were to adopt another man's lie, and were to use it in all election circulars, and were to make it his own, he and that candidate would be responsible for such lie. But if the person alleged to be agent published, as in the *Swansea Case* (municipal), *Cambria Daily Leader*, 3rd February, 1909, a statement (not shown to be a lie) for his own protection, and the candidate afterwards, thinking that it would help his election to give further circulation to such letter, suggested to the person alleged to be agent that he should further circulate such letter, it does not appear that such fact would constitute such person an agent. It is as though, said the commissioner, a squire, who was a candidate at an election, heard it said that his gamekeeper, who was one of his supporters, and whose popularity would affect his own, had been setting man-traps in the park. If he were to suggest that such a gamekeeper should publish a denial of the slander, and if he were then to publish the denial as a circular, could it be said that he had thereby made the gamekeeper an agent to do election work for him?

(*n*) *Hastings Case* (1869), Leigh and Le Marchant, 4th ed., 1885, p. 81.

(*o*) *Hereford Case* (1869), 1 O'M. & H. 194, 195

SECT. 1. Parliamentary.

also be an agent for a limited purpose only (*p*). An agent of an agent may be (*q*), but is not necessarily (*r*), an agent of the candidate.

Canvassers.

Canvassers—those who ask persons to vote or refrain from voting (*s*)—may or may not be agents; but canvassing is one of the things from which agency may be inferred (*t*). And proof of canvassing by procurement, express or implied, of the candidate is sufficient to establish agency (*a*). The mere fact of canvassing is not conclusive (*b*), especially if the candidate is himself carrying on a personal canvass (*c*).

Committees.

Membership of a committee is, again, one of those circumstances each of which is inconclusive in itself, but several of which taken cumulatively will establish agency (*d*).

Associations.

Political associations may be agents of the candidate when in privity with him (*e*). But they may be agents of his party

(*p*) *Westbury Case* (1869), 1 O'M. & H. 47, 48; *North Norfolk Case* (1869), 1 O'M. & H. 236, 237; *Bodmin Case* (1869), 1 O'M. & H. 117, 120.

(*q*) *Barnstaple Case* (1874), 2 O'M. & H. 105; *Plymouth Case* (1880), 3 O'M. & H. 107, 108; *Bewdley Case* (1869), 1 O'M. & H. 15, 19; *Cashel Case* (1869), 1 O'M. & H. 286, 288.

(*r*) *Westminster Case* (1869), 1 O'M. & H. 89, 96; *Mallow Case* (1870), 2 O'M. & H. 18, 21.

(*s*) *Westbury Case, supra*, at p. 56.

(*t*) *Shrewsbury Case* (1870), 2 O'M. & H. 36, approved by MANISTY, J., *Tomline* v. *Tyler* (*Sir H.*) (1881), 44 L. T. 187, at p. 191; and compare *Tewkesbury Case* (1880), 3 O'M. & H. 98; *Salisbury Case* (1883), 4 O'M. & H. 21.

(*a*) *Westbury Case, supra*, at p. 55; *Wigan Case* (1881), 4 O'M. & H. 1, 13; *Norwich Case* (1869), 1 O'M. & H. 8, 11; *Lichfield Case* (1869), 1 O'M. & H. 22, 25, 26.

(*b*) *Shrewsbury Case, supra; Bolton Case* (1874), 2 O'M. & H. 138, 140, 141.

(*c*) *Harwich Case* (1880), 3 O'M. & H. 61, 69.

(*d*) Especially if it be a committee with written instructions from the candidate's leading agents (*Dublin Case* (1869), 1 O'M. & H. 270, 272; *Huddersfield Borough Case* (1853), 2 Pow. R. & D. 124, 128), or in close connection with the candidate himself (*Wakefield Case* (1874), 2 O'M. & H. 100, 102, 103; *Tewkesbury Case, supra*). *Aliter* if the committee cannot be connected in the evidence with the candidate (*Staleybridge Case* (1869), 1 O'M. & H. 66; *Windsor Case* (1874), 2 O'M. & H. 88, 89), especially in the case of a very large committee (*Westminster Case, supra*, at pp. 87, 92). If a member of a committee show great and open activity as such, it will increase the presumption of agency (*Durham Case* (1874), 2 O'M. & H. 134, 136). Merely to have been seen in a committee-room and to be in possession of handbills from that committee-room is not enough to establish agency (*Maidstone Borough Case* (1906), 5 O'M. & H. 200, 207). For the effect of membership of an election committee on the liability of the candidate in an action of contract at common law, see *Honeywood* v. *Geary* (*Sir W.*) (1808), 6 Esp. 119.

(*e*) *Bewdley Case* (1880), 3 O'M. & H. 143, 146; *St. George's Division Case* (1896), 5 O'M. & H. 89, 97; *Rochester Borough Case* (1892), 4 O'M. & H. 156, 158; *Wakefield Case* (1874), 2 O'M. & H. 100, 102; *Hexham Case* (1892), Day, 90, 91; 4 O'M. & H. 143, 145. Where the candidate provides substantially the whole of the funds of the association, he is the more readily held to be liable (*Truscott* v. *Bevan* (1880), 44 L. T. 64). It is a wise plan, as soon as the candidate has been fixed upon, for these associations to suspend their operation until the election is over (*Rochester Borough Case* (1892), 4 O'M. & H. 156, *per* CAVE, J., at p. 160; *Wakefield Case, supra; Bodmin Division Case* (1906), 5 O'M. & H. 225, 234).

without being his agents (*f*), even though they canvass for him (*g*).

If the candidate knowingly ratifies the act under consideration, he is liable as though the act had been that of his agent at the time when it was done (*h*).

Ordinary agency will be taken to have ceased at the close of the poll (*i*), unless the candidate's privity is shown (*k*).

The statement of an agent after the transaction is not evidence against the candidate (*l*).

SUB-SECT. 8.—*Nomination.*

Nomination.

545. It is a condition precedent to a valid election of a member to serve in Parliament that the candidate shall have been duly nominated in writing (*m*).

The returning officer must provide such nomination papers as may be necessary (*n*), and must supply a form of nomination paper to any registered elector requiring the same during such two hours as the returning officer may fix between the hours of ten in the morning and two in the afternoon on each day intervening between the day on which notice of election was given and the day of election, and during the time appointed for the election; but the use of a nomination paper supplied by the returning officer is not obligatory, so, however, that the paper used is in the prescribed form (*o*).

Essentials to a valid nomination.

546. The nomination paper must be subscribed by two registered electors of the constituency as proposer and seconder (*p*), and by eight other registered electors of the same constituency as assenting to the nomination (*q*). It must be delivered during the time appointed for the election (*r*) to the returning officer by the

(*f*) *Worcester Case* (1892), Day, 85, 86; 4 O'M. & H. 153, 154; *Westbury Case* (1880), 3 O'M. & H. 78, 79; *à fortiori* such bodies as the Licensed Victuallers' Association (*Walsall Borough Case* (1892), 4 O'M. & H. 123, 124).

(*g*) *Westminster Case* (1869), 1 O'M. & H. 89, 92; *Heywood* v. *Dodson and Lawley* (1880), 44 L. T. 285.

(*h*) *Tamworth Case* (1869), 1 O'M. & H. 75, 81; *Blackburn Case* (1869), 1 O'M. & H. 198, 201.

(*i*) *King's Lynn Case* (1869), 1 O'M. & H. 206, 208; *North Norfolk Case* (1869), 1 O'M. & H. 236, 243; *Longford Case* (1870), 2 O'M. & H. 6, 12.

(*k*) *Salford Case* (1869), 1 O'M. & H. 133, 136.

(*l*) *Harwich Case* (1880), 3 O'M. & H. 61, 64; *Cheltenham Case* (1880), 3 O'M. & H. 86, 88. The rules of evidence in such cases follow the analogy of the law of master and servant (*ibid.*).

(*m*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 1.

(*n*) *Ibid.*, s. 8.

(*o*) *Ibid.*, Sched. I., Part I., r. 7. Where in a county council election the form supplied did not give the name of the division, but left a space for it, which space, owing to inadvertence, was not filled in, this was held to have been a mistake in the use of the form, and not to invalidate the election (*Marton* v. *Gorrill* (1889), 23 Q. B. D. 139).

(*p*) *Ibid.*, s. 1.

(*q*) *Ibid.*

(*r*) That is, "such two hours between the hours of ten in the forenoon and three in the afternoon, as may be appointed by the returning officer" (Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 4). Although the

SECT. 1. Parliamentary.

candidate himself or his proposer or seconder (*s*). If it is delivered by any other person than one of these three, it will be of no effect, and the election of a candidate so nominated will be void (*t*).

Each candidate must be nominated by a separate nomination paper (*u*); the same electors, however, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more (*v*). If any elector subscribes more nomination papers than there are vacancies to be filled, those papers are good which are subscribed before he has exceeded the due number, and those which are subscribed afterwards are bad (*a*).

The candidate must be described in the nomination paper in such manner as in the opinion of the returning officer is calculated sufficiently to identify him. The description must include his names, his place of abode (*b*), and his rank or profession or calling (*c*). His surname must come first in the list of his names (*d*), and must be followed by his full christian name or names (*e*).

No objection to a nomination paper on the ground of the description of a candidate therein being insufficient, or not in compliance with the rule, can be allowed or deemed valid unless such objection is made by the returning officer or by some other person at or immediately after the time of the delivery of the nomination paper (*f*).

The full christian names are not necessary in the case of the proposer, seconder, and assentors (*g*), nor is it necessary

returning officer must attend for one hour after that time, this hour forms no part of the "time appointed" (see the exact words of the rule).

(*s*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 1.

(*t*) *Monks* v. *Jackson* (1876), 1 C. P. D. 683. This was a case of an election of a councillor of a ward in a borough.

(*u*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part. I., r. 5.

(*v*) *Ibid.*

(*a*) *Burgoyne* v. *Collins* (1882), 8 Q. B. D. 450. This was a case of an election of a councillor for a borough not divided into wards.

(*b*) "Abode" for this purpose means "place of residence" (*R.* v. *Hammond* (1852), 17 Q. B. 772, 781; compare *Allen* v. *Greensill* (1847), 4 C. B. 100). It is essential that it should be truly stated (*R.* v. *Deighton* (1844), 5 Q. B. 896; *R.* v. *Coward* (1851), 16 Q. B. 819). The actual situation of the house must be described sufficiently to identify it (*Soper* v. *Basingstoke Corporation* (1877), 2 C. P. D. 440; *R.* v. *Gregory* (1853), 1 E. & B. 600). But a man may have two residences, either of which may be given as his place of abode (*Bond* v. *St. George's, Hanover Square (Overseers)* (1870), L. R. 6 C. P. 312).

(*c*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 6.

(*d*) *Ibid.*

(*e*) *Mather* v. *Brown* (1876), 1 C. P. D. 596. This was a case of an election of a councillor of a ward. The fact that the candidate was described as "Mather, Robert V.," instead of "Mather, Robert Vicars," was held a fatal objection. But an abbreviation which everyone will understand, such as "Wm." for "William," is permissible. It must not, however, be taken that any abbreviation will suffice (*Henry* v. *Armitage* (1883), 12 Q. B. D. 257, C. A. This was a case of an election of a councillor of a ward in a borough). A mere misspelling of a name not calculated to mislead any elector does not give good ground for objection (*Miller* v. *Everton* (1895), 11 T. L. R. 364. This was a case of an election of a councillor of a ward. See also *R.* v. *Plenty* (1869), 9 B. & S. 386, and *R.* v. *Bradley* (1861), 3 E. & E. 634).

(*f*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part. I., r. 6.

(*g*) On the principle of *expressio unius exclusio alterius* (*Bowden* v. *Besley*

that their names should be given in the precise form of the register (*h*).

The same candidate may be nominated by as many nomination papers as he pleases; and if any one nomination paper is duly filled in and subscribed, it will suffice (*i*).

The name of the candidate may be filled in after the proposer and seconder have signed the nomination paper (*k*), but no alteration must be made after its delivery to the returning officer, unless by the consent of all the subscribers (*l*).

Who may be present at the nomination.

547. The candidate nominated by each nomination paper and his proposer and seconder, and one other person selected by the candidate, but no other person, may, except for the purpose of assisting the returning officer, attend the proceedings during the time appointed for the election (*m*).

Declaration of election or poll.

548. If after the expiration of one hour after the time appointed for the election no more candidates stand nominated than there are vacancies to be filled up, the returning officer must forthwith declare the candidates who may stand nominated to be elected and return their names to the Clerk of the Crown in Chancery; but if at the expiration of such hour more candidates stand nominated than there are vacancies be filled up, the returning officer must adjourn the election and take a poll (*n*).

(1888), 21 Q. B. D. 309. This was a case of an election of a councillor for a ward).

(*h*) *Bowden* v. *Besley* (1888), 21 Q. B. D. 309; and compare *Moorhouse* v. *Linney* (1885), 15 Q. B. D. 273, which was another case of an election of councillors for a ward. Where the proposer in a county council election added the word "junior" to the end of his name, in accordance with his usual practice, though his father was dead, this did not invalidate the nomination (*Gledhill* v. *Crowther* (1889), 23 Q. B. D. 136); and where, in an election of a councillor of a ward, the assentor's name was correctly signed, but the printer of the burgess roll had incorrectly divided one of his names into two parts, the nomination was held good (*Harding* v. *Cornwell* (1889), 60 L. T. 959). But the giving of the wrong number has been held to invalidate the nomination (*Gothard* v. *Clarke* (1880), 5 C. P. D. 253. This was a case of an election of a councillor of a ward).

(*i*) See *Northcote* v. *Pulsford* (1875), L. R. 10 C. P. 476 (a case of an election of councillors of a ward). Certain rules were cited in the course of the case which were held not to apply to municipal cases. See p. 342, *post*, for nomination in municipal elections.

(*k*) *Cox* v. *Davies*, [1898] 2 Q. B. 202. This was a case of an election of a rural district councillor.

(*l*) *Harmon* v. *Park* (1881), 7 Q. B. D. 369. This was a case of an election of a councillor of a ward, and an alteration was made after delivery to the town clerk by substituting another burgess as proposer in the absence of the seconder and assenting burgesses. See, however, the case of *Howes* v. *Turner* (1876), 1 C. P. D. 670, where an alteration made after delivery of the nomination paper to the town clerk to correct a supposed mistake *ex nimium cautela* was held in itself unobjectionable, though the election was avoided owing to the town clerk having named the wrong day for delivery of nomination papers and having thereby misled the electors.

(*m*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 8.

(*n*) *Ibid.*, s. 1. If the returning officer has decided the nomination papers to be validly filled in and subscribed, he seems to be regarded as *functus officio*. See *Pritchard* v. *Bangor Corporation* (1888), 13 App. Cas. 241. This was the case of an election of a councillor of a ward. All this is of course subject to what follows (see p. 277, *post*) as to the security to be given for the returning officer's expenses. As to the poll, see p. 305, *post*.

SECT. 1. Parliamentary.

Withdrawal of candidate.

549. A candidate may during the time appointed for the election, but not afterwards, withdraw from his candidature by giving a notice of withdrawal, signed by him, to the returning officer. The proposer of a candidate nominated in his absence out of the United Kingdom may withdraw such candidate by a written notice signed by him and delivered to the returning officer, together with a written declaration of such absence of the candidate (*o*).

If any candidate nominated during the time appointed for the election is duly withdrawn, the returning officer must give public notice of the name of such candidate and of the names of the persons who subscribed his nomination paper, as well as of the candidates who stood nominated or were elected (*a*).

Notice of persons nominated.

550. The returning officer must, on the nomination paper being delivered to him, forthwith publish notice of the name of the person nominated as a candidate and his proposer and seconder by placarding, or causing to be placarded, the names of the candidate and his proposer and seconder in a conspicuous position outside the building in which the room appointed for the election is situate (*b*).

Objections to nomination papers.

551. A person is not entitled to have his name inserted in any ballot paper as a candidate unless he has been nominated in the prescribed manner, and every person whose nomination paper has been delivered to the returning officer during the time appointed for the election must be deemed to have been nominated in the prescribed manner, unless objection is made to his nomination paper by the returning officer or some other person before the expiration of the time appointed for the election or within one hour afterwards (*c*).

The returning officer must decide (*d*) on the validity of every objection made to a nomination paper; and his decision, if disallowing the objection, is final, but, if allowing the same, is subject to reversal on petition questioning the election or return (*e*). A disqualification which does not appear on the face of the nomination paper does not make the nomination paper bad (*f*).

(*o*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 1.

(*a*) *Ibid.*, Sched. I., Part I., r. 10.

(*b*) *Ibid.*, r. 11.

(*c*) *Ibid.*, r. 12.

(*d*) If his decision relates to the description of the candidate being insufficient or not in compliance with the rule, it must be given immediately after the delivery of the nomination paper (Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 6), but if the ground of his objection does not fall within this category, his decision may be given at any time within the hour after the time appointed for the election (*ibid.*, r. 12). Compare *Pritchard* v. *Bangor Corporation* (1888), 13 App. Cas. 241; *Howes* v. *Turner* (1876), 1 C. P. D. 670; *Clare Eastern Division Case* (1892), 4 O'M. & H. 162, 164; *Davies* v. *Kensington* (*Lord*) (1874), L. R. 9 C. P. 720; *Harford* v. *Linskey*, [1899] 1 Q. B. 852.

(*e*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 13.

(*f*) See *Hobbs* v. *Morey*, [1904] 1 K. B. 74 (a municipal election case), and compare *Brown* v. *Benn* (1889), 53 J. P. 167, and *Boyce* v. *White* (1905), 92 L. T. 240.

Interruption.

552. If the nomination is interrupted or obstructed by any riot or open violence the returning officer, or his lawful deputy, must adjourn the nomination at the particular place at which such interruption or obstruction has happened until the following day, and if necessary must further adjourn such nomination until such interruption or obstruction has ceased, when the returning officer or his deputy must again proceed with the business of the nomination at the place at which the same may have been interrupted or obstructed, and the day on which the business of the nomination has been concluded is to be deemed to have been the day fixed for the election, and the commencement of the poll is to be regulated accordingly. This, however, does not authorise an adjournment to a Sunday, and if the day to which the adjournment would otherwise be made happens to be a Sunday, Good Friday, or Christmas Day, that day or days must be passed over, and the following day is the day to which the adjournment must be made (*g*).

Charges of returning officer.

553. The returning officer is entitled to his reasonable charges, not exceeding the amounts prescribed by law, in respect of services and expenses of certain services properly rendered or incurred by him for the purposes of the election, and he may, if he think fit, require security to be given for these charges (*h*).

Where security is required by the returning officer it is to be apportioned and given as follows:—(1) At the end of the two hours appointed for the election the returning officer must forthwith declare the number of the candidates who stand nominated, and must, if there be more candidates nominated than there are vacancies to be filled up, apportion equally among them the total amount of the required security (*i*); (2) within one hour after the end of the two hours aforesaid security must be given by or in respect of each candidate then standing nominated for the amount so apportioned to him; (3) if in the case of any candidate security is not thus given or tendered, he is to be deemed to be withdrawn; (4) a tender of security in respect of any candidate may be made by any person; (5) security may be given by deposit of any legal tender or of notes of any bank being commonly current in the county or borough for which the election is held, or, with the consent of the returning officer, in any other manner; (6) the balance, if any, of a deposit beyond the amount to which the returning officer is entitled in respect of any candidate is eventually to be repaid to the person or persons by whom the deposit was made (*j*).

If at the end of the two hours appointed for the election not more candidates stand nominated than there are vacancies to be filled up, the maximum amount which may be required as security is £25 (*k*).

(*g*) Parliamentary Elections Act, 1835 (5 & 6 Will. 4, c. 36), s. 8.

(*h*) Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), ss. 2, 3. As to what expenses are chargeable by him, see p. 333, *post*.

(*i*) *Ibid.*, s. 3.

(*j*) *Ibid.*

(*k*) *Ibid.*, Sched. III.; and Parliamentary Elections (Returning Officers) Act, 1885 (48 & 49 Vict. c. 62), s. 2, amending the former enactment.

SECT. 1. Parliamentary.

University elections.

554. These provisions do not apply to the universities (*l*). There a show of hands is taken in the first instance (*m*), but either party may demand a poll (*n*).

SUB-SECT. 9.—*Freedom of Election and the Prevention of Corrupt and Illegal Practices.*

(i.) *In General.*

Freedom of election.

555. The disturbance of an election by force of arms, malice, or menaces is prohibited by a very early statute (*o*). But all subjects, including peers, may legally use their legitimate influence to persuade the electors to vote for such persons as they think fit (*p*); and the ordinary methods which prevail at election times (up to and

(*l*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 31; Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), s. 8.

(*m*) As the statutes cited do not apply in the case of the universities, it is necessary in their case to have recourse to the common law. See Heywood, Digest of the Law respecting County Elections, ed. 1812. It would appear that at common law various forms of election prevailed in various places. "It is usual," says Heywood, p. 353, "for the candidates to be proposed, and the electors then present proceed to the election, according to the usage of the place or such agreement as they make among themselves. . . . In general the election is made either by the view or the poll. It is made by the view when the general inclination of the assembly in favour of any particular candidate or candidates is discovered and declared by the sheriff, with the consent of the electors present. The poll is the numbering the polls of the electors who may tender their votes individually, and separating them from those who have no votes. The election made by the view may be by voices or holding up of hands, the collecting of the friends of each candidate into separate troops or bodies, or such other way as has been usual on such occasions." In modern practice the show of hands is the method adopted. In the case of London University the vice-chancellor must proceed to election within six days after the receipt of the writ (Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 42), but with this exception the universities are not fettered as to any exact date for taking the show of hands.

(*n*) 4 Co. Inst. 48. Where a poll is demanded, it must be given, even though the candidate who has been successful on the show of hands withdraws, for the candidate defeated on the show of hands has not been elected at all (*Wexford Election Petition* (1869), 3 I. R. C. L. 612).

(*o*) Stat. (1275) 3 Edw. 1, Statute of Westminster I., c. 5. This ancient statute is headed "There shall be no disturbance of free elections"; and it is phrased thus: "And, because elections ought to be free, the King commandeth upon great forfeiture that no man by force of arms" etc. "Great forfeiture" is explained by Coke to mean "the disturbers to be punished by grievous fines and imprisonment"; and he adds that before the passing of the statute the ancient maxims of the law were *Fiant electiones rite et libere sine interruptione aliquâ* and *Electio libera est* (2 Co. Inst. 169). So, again, stat. (1405) 7 Hen. 4, c. 15, which is headed "The Manner of the Election of Knights of Shires for a Parliament," enacts that "they shall proceed to the election freely and indifferently, notwithstanding any request or commandment to the contrary." An officer or man of the Territorial Force is not liable to any penalty or punishment for or on account of his absence during the time he is absent at any election of a member to serve in Parliament, or during the time he is going to or returning from such voting (Territorial and Reserve Forces Act, 1907 (7 Edw. 7, c. 9), s. 23 (2)).

(*p*) *Galway Case* (1872), 2 O'M. & H. 46, 54. Peers, however, were usually, until recently, careful in practice not to interfere in elections in any way owing to a series of resolutions passed in the House of Commons, beginning with one in 1641—which resolutions, however, were abrogated in 1910, except as regards lieutenants of counties. See Journals of the House of Commons, 17 Car. 1, 10th December, 1665, declaring improper pressure brought by peers to be a violation of the privileges of Parliament and showing that any letters from peers "of

including the day of the poll) of persuading the electors by addressing meetings, posting placards, distributing handbills (*q*), and so forth, are perfectly lawful, subject to certain defined restrictions (*r*), and so long as not incompatible with freedom of election (*s*). So likewise and upon the same conditions the canvassing of voters—a practice which has for its chief end the bringing up of every supporter to the poll (*a*)—or the asking them to record their votes in favour of a particular candidate is perfectly lawful in itself (*b*).

General corruption.

556. Apart altogether from the question of agency, there may be such general corruption as will avoid the election at common law (*c*). Thus, if there is bribery, though not shown to be in any way connected with the agents of the candidate, which is so extensive as to make it plain that there has not been a fair and open election, but a corrupt election, the return will be avoided (*d*).

The policy and theory of the law is that every man upon whom the election franchise is conferred should judge for himself who is the best and preferable candidate, and give his vote accordingly. There are some influences which are called "due" influences, and other influences which are called "undue" influences. Among the latter are what are called bribery, treating, and oppression, *i.e.* an undue and improper pressure put upon a man. By the common law bribery, treating, and undue pressure violate an election. Therefore if it were proved that there existed in the constituency generally any bribery of large extent, and that it came from unknown quarters, that no one could tell where it had come from, but that people were bribed generally and indiscriminately, or if it could be proved that there was treating in all directions on purpose to influence voters, that houses were thrown open where people could get drink without paying for it, by the common law in such a case the election would be bad, because it would have been carried on contrary to the policy of the law (*e*).

The election in such a case is bad, however innocent the candidate

that nature" necessarily do tend to such a violation of privileges. A sessional order confirming this position was invariably passed until February, 1910, when it was amended as above stated (*Times* for 22nd February, 1910).

(*q*) See *Wigan Case* (1881), 4 O'M. & H. 1, 8; and compare *Stepney Case* (1886), 4 O'M. & H. 34, 55, where, although the judges differed in their view on the point before them, the view of both supports what is stated in the text.

(*r*) Illegal practices, *mala prohibita*, a principal object of the prohibition of which is the prevention of waste of money at elections (see *Stepney Borough Case* (1892), 4 O'M. & H. 178, *per* CAVE, J., at p. 179), are to be distinguished from corrupt practices, *mala in se*, and their consequences are different (Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 4—6, 10, 11). But neither of these statutory offences as such can in any circumstances make the candidate lose his seat unless committed by him or his agents, whereas general corruption or general intimidation, as explained in the following pages, may avoid the election in certain circumstances although the candidate and his agents may be altogether innocent.

(*s*) Corrupt practices under the Act and general corruption or general intimidation at common law are all regarded as incompatible with freedom of election.

(*a*) As to bringing supporters up to the poll in vehicles etc., see pp. 293, 303, *post*.

(*b*) See *Elgin and Nairn Case* (1895), 5 O'M. & H. 1, 15.

(*c*) *Lichfield Case* (1869), 1 O'M. & H. 22, 26.

(*d*) *Bridgewater Case* (1869), 1 O'M. & H. 112, 115.

(*e*) *Bradford Case* (1869), 1 O'M. & H. 35, 40, 41.

SECT. 1. Parliamentary.

may be, because of the incapacity of the voters, by reason of the general corruption, to give valid and effective votes (*f*).

General treating falls under this principle equally with general bribery (*g*), but the court may take into account the fact that the inducement in the case of treating is of a more temporary nature than in the case of bribery (*h*).

But corruption must have been in favour of the person who was elected (*i*). The court in each case will look to the particular circumstances, and especially to the absolute majority obtained, to see whether the result might have been affected by the corruption proved (*k*).

General intimidation.

557. Where intimidation is so general and extensive in its operation that it cannot be said that the polling is a fair representation of the opinion of the constituency, the election will be void (*l*), but it must be established that men of ordinary nerve and courage have been prevented from voting (*m*).

If the intimidation is local or partial, the election will not be set aside by reason of it (*n*). Where one man through fear abstains from voting, this is not enough (*o*). But when the intimidation is general, the onus lies upon the constituency incriminated to show that the gross amount of the intimidation could not possibly have affected the result (*p*). If it is shown that the return could not have been affected, the election will be allowed to stand (*q*); but it is not sufficient merely to prove that it has not been in fact affected (*r*).

(*f*) *Beverley Case* (1869), 1 O'M. & H., 143, 149. Persons who supply beer etc., knowing that candidates intend to use it for treating, cannot recover the price (see *Ward* v. *Nanney* (1828), 3 C. & P. 399; *Ribbans* v. *Crickett* (1798), 1 Bos. & P. 264; *Hughes* v. *Marshall* (1831), 2 Cr. & J. 118; *Lofthouse* v. *Wharton* (1808), 1 Camp. 550, n.).

(*g*) *St. Ives Case* (1875), 3 O'M. & H. 13; *Bradford Case* (1869)1 O'M. & H. 35. As to a report to the Speaker upon the question whether corrupt practices have "extensively prevailed" within the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 11(a), see *Maidstone Borough Case* (1901), 5 O'M. & H. 149, 153.

(*h*) *Tamworth Case* (1869), 1 O'M. & H. 75, 85.

(*i*) *Ipswich Case* (1886), 4 O'M. & H. 70, 71. Compare *Sligo Case* (1869), 1 O'M. & H. 300.

(*k*) The absolute majority obtained is an important ingredient in deciding this. The corruption of ten or twelve where no agency is proved might be very important when there is a majority of twelve, but is certainly not so important when there is a majority of sixty, still less when it is as large as a hundred or a thousand or more (*Ipswich Case, supra*, at p. 72). The giving of ten gallons or so of beer in a constituency of 2,600 people, even if it were given for the purpose of influencing their votes, cannot be general treating (*per* CAVE, J., *Pontefract Case* (1893), Day, 125, 129).

(*l*) *North Durham Case* (1874), 2 O'M. & H. 152, 157; *Stafford Case* (1869), 1 O'M. & H. 228, 229; *Thornbury Case* (1886), 4 O'M. & H. 65, 67. Compare *Ipswich Case, supra.*

(*m*) *Salford Case* (1869), 1 O'M. & H. 133, 141.

(*n*) *North Durham Case, supra.*

(*o*) *East Clare Case* (1892), Day, 161, 165.

(*p*) *North Durham Case, supra.*

(*q*) *Ibid.*, if the case is read according to the maxim *Expressio unius exclusio alterius.* And compare the reasoning in the analogous cases of general corruption (*Ipswich Case, supra; Pontefract Case* (1893), Day, 125).

(*r*) The rights of the minority to express themselves at the poll must be

Spiritual undue influence falls within the principle of the law of general intimidation (*s*).

To put general intimidation upon a parallel with general bribery or general treating, it must be shown to spread over such an extent of ground and to permeate through the community to such an extent that the tribunal is satisfied that freedom of election had ceased to exist in consequence thereof (*t*).

(ii.) *Corrupt Practices.*

Corrupt and illegal practices.

558. "Corrupt practices" and "illegal practices" are technical terms to denote particular offences defined by Act of Parliament (*a*). If any candidate has been guilty, either personally (*b*) or by his agents (*c*), of a corrupt or illegal practice, the election may be avoided thereby.

Bribery.

559. Bribery is a corrupt practice (*d*). The following persons are deemed to be guilty of bribery:—

(1) Every person who directly or indirectly, by himself (*e*) or by

upheld (*Drogheda Case* (1869), 1 O'M. & H. 252, 255; *Stafford Case, supra*). It is a mistake to suppose that where general undue influence exists it must further be shown that the result of the election has in fact been affected thereby (*South Meath Case* (1892), Day, 132, 140). But for the principle of the parliamentary committees see *Coventry Case* (1833), Per. & Kn. 335; and compare the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 26.

(*s*) *South Meath Case, supra; North Meath Case* (1892), Day, 141.

(*t*) *Drogheda Case* (1869), 1 O'M. & H. 252, 258. The Irish court in this case approved the expression "the communism of intimidation," which counsel had used, in the sense explained in the text. In the *Staleybridge Case* (1869), 1 O'M. & H. 66, 72, the law is thus summed up: "In order to avoid an election on the ground of intimidation and undue influence, it must be shown either that (1) the rioting or violence was instigated by the candidate or his agents, for whom he is responsible [as to which case see p. 291, *post*], or that (2) it prevailed to such an extent as to prevent the election from being an entirely free election." The parliamentary committees had acted on a similar principle. See *Nottingham Case* (1802), 1 Peck. 77. Compare *Ilchester Case* (1803), 1 Peck. 302; and see Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 26.

(*a*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51); and compare Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), and Corrupt and Illegal Practices Prevention Act, 1895 (58 & 59 Vict. c. 40). These Acts, including the provisions about election expenses, seem to apply to university parliamentary elections. See s. 38 of the Act of 1854 and s. 64 of the Act of 1883.

(*b*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 4, 11.

(*c*) *Ibid.*, ss. 6, 11.

(*d*) *Ibid.*, s. 3. Also bribery was, and still is, notwithstanding the statutes, an offence at common law. But an information for bribery at common law will be cautiously granted since the additional penalties provided by statute (*R.* v. *Pitt* (1762), 1 Wm. Bl. 380). The election might be avoided for a single act of bribery at common law if brought home to the candidate himself. See 1 Bl. Com. (ed. 1844), p. 179.

As to the circumstances in which "general" bribery at common law will avoid an election in spite of the innocence of the candidate and his agents, see p. 279, *ante*.

(*e*) Personal corruption ought not to be charged except upon good grounds (*Tewkesbury Case* (1880), 3 O'M. & H. 97, 99; compare *Canterbury Case* (1880), 3 O'M. & H. 103, 104), otherwise the petitioner will be mulcted in costs (*Salisbury Case* (1880), 3 O'M. & H. 130, 131; *Sandwich Case* (1880), 3 O'M. & H. 158, 160). Where a candidate in person gives tickets to voters, which tickets are exchangeable for money when presented to that candidate's agent, the court may find such agent personally guilty of bribery (*Canterbury Case* (1853), 2 Pow. R. & D. 14, 15). In that case each voter was allowed to name two others for coloured

SECT. 1. Parliamentary.

any other person on his behalf (*f*), gives, lends (*g*), or agrees to give or lend, or offers (*h*), procures, or promises to procure or to endeavour to procure, any money or valuable consideration (*i*) to or

tickets, and the parliamentary committee avoided the election. Where the candidate has not appointed another person as election agent, it is the more easy to establish personal bribery against that candidate (*Cashel Case* (1869), 1 O'M. & H. 286, 288).

(*f*) For the parliamentary common law of agency which prevails in this connection, see p. 269, *ante*.

(*g*) Loans to voters were held by a parliamentary committee to be in certain circumstances bribery (*Lyme-Regis Case* (1848), 1 Pow. R. & D. 25, 38). Bribery by loan is but colour, and is really bribery by gift (5 Com. Dig. (ed. 1822), tit. Parliament, D 10). As to "colour," see p. 287, *post*.

(*h*) An offer to bribe is as bad as actual bribery, but it is more difficult to prove (*Coventry Case* (1869), 1 O'M. & H. 97, 107). The presence of the word "offers" in this section resolves the uncertainty entertained by the parliamentary committees. See *Ipswich Case* (1835), Kn. & Omb. 332, 388); and compare *Wigton Burghs Case* (1853), 2 Pow. R. & D. 133, 135, where an offer of a bribe was not considered sufficient to invalidate the election. The *Aylesbury Case* (1859), Wolf. & B. 10, 16, was inconclusive.

(*i*) Valuable consideration may of course be of many kinds. In old days the equivalent of money was frequently given in a form hardly distinguishable from money itself; *e.g.*, see the *Canterbury Case* (1853), 2 Pow. R. & D. 14, 15. Compare *Hertford Case* (1833), Cockb. & Rowe, 184; *Oxford Case* (1833), Cockb. & Rowe, 139. See also *Sulston* v. *Norton* (1761), 3 Burr. 1235, where a voter was given five guineas to vote for certain candidates, but gave a note in exchange for it, but the donor of the money gave him a counter-note obliging himself to give up the former note when the condition should be performed. Lord MANSFIELD, C.J., said: "This is a gift. The note and all the rest is mere evasion, colour, disguise, and device to evade the law." See also *Webb* v. *Smith* (1838), 4 Bing. (N. C.) 373.

Corrupt payment of another candidate's expenses, if made to secure his influence, is illegal; but payment of another candidate's expenses, if made in order to serve the party to which both belong, is innocent (*Coventry Case*, *supra*, at p. 100).

Taking a burdensome share in a building society in order to relieve a voter and thereby to induce him to vote is bribery (*Spencer* v. *Harrison* (1880), 44 L. T. 283).

A promise that the voter "shall be no loser" by his coming to vote is an act of corruption (*Staleybridge Case* (1869), 1 O'M. & H. 66, 67).

Paying a man's debts to release him from the sheriff, and so to enable him to vote, was held to be bribery (*Londonderry Case* (1869), 1 O'M. & H. 274, 275).

Permission to shoot rabbits on the candidate's estate was held to be bribery (*Launceston Case* (1874), 2 O'M. & H. 129, 133).

Payment of a substitute to do the voter's work while he voted was held to be corrupt (*Plymouth Case* (1880), 3 O'M. & H. 107, 108).

Forgiveness of rent was considered corrupt upon the facts of a particular case (*Ipswich Case* (1857), Wolf. & D. 173, 178).

A cask of ale sent by a brewer to a publican was held to be bribery (*Huddersfield Case* (1859), Wolf. & B. 28, 36).

Treating will not as a rule be regarded as bribery, if it takes the form of refreshment to be consumed at the moment, and not pocketed or reserved for future enjoyment, small quantities of meat and drink. But it will depend on circumstances. "A hungry creature will go into the trap for a bait at which the well-fed one will turn up his nose with disdain" (*Bodmin Case* (1869), 1 O'M. & H. 117, *per* WILLES, J., at p. 125. See the whole judgment, where the distinction between treating and bribery is discussed at length, and illustrated by the judge's oath "not to take any gift from any man who may have plea pending before him unless it be meat or drink, and that of small value").

Treating is a separate and in some respects a less serious offence, and is the subject of special enactment, namely, the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 3. See p. 289, *post*.

When the valuable consideration takes the form of an office or place, it is

for any voter (*k*), or to or for any person on behalf of any voter, or to or for any other person, in order to induce (*l*) any voter to vote

rather a matter to be considered under the next sub-section. And see *Waterford Case* (1870), 2 O'M. & H. 24, 25.

(*k*) A voter is a person who has or who claims to have any right to vote in the election of a member or members to serve in Parliament (Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 38). It was long ago held that it was immaterial whether the party corrupted had a right to vote or not, if the person corrupting him thought that he had such a right (*Lilly* v. *Corne* (1774), 1 Selwyn, Nisi Prius (ed. 1810), p. 678, n.). The practice before the old parliamentary committees was not clear. See *Boston Case* (1803), 1 Peck. 434, 438. Under the section above cited it has been held that a voter disqualified by non-residence under the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 79, may nevertheless be the object of bribery (*Guildford Case* (1869), 1 O'M. & H. 13, 14, 15). If, however, the voter does not "claim" a vote, but merely receives the money and says nothing—*e.g.*, in the case of bribery by post where the letter is not answered—the section would not appear to include this case; and the law as laid down in *Lilly* v. *Corne*, *supra*, must accordingly be thus far modified.

(*l*) If the act is done for the purpose of so inducing the voter, it is no answer to say that the bribe was unsuccessful (*Henslow* v. *Fawcett* (1835), 3 Ad. & El. 51, 58; *Harding* v. *Stokes* (1837), 2 M. & W. 233, 235; *Sulston* v. *Norton* (1761), 3 Burr. 1235. Compare *St. Ives Case* (1775), 2 Doug. El. Cas. 389, 416, where, one side having unsuccessfully attempted to bribe a man, and having in fact given him money for that purpose, his vote for the other side was said to have been struck off by the parliamentary committee, *sed quære*. The reason suggested was that the voter could not swear "that he hath received no money in order to give his vote at that election"). A similar result will now be arrived at by reading together the present section and the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 3, 36.

But it is impossible to exclude the fact that the alleged bribe has been unsuccessful (*Lichfield Case* (1869), 1 O'M. & H. 22, 29). Stronger evidence is required in such cases than that which is regarded when the bribery has been successful, because of the greater likelihood of there having been some misunderstanding (*Cheltenham Case* (1869), 1 O'M. & H. 62, 64, 65).

A corrupt motive must in all cases be strictly proved. Thus where a voter was taken back into the employment of an agent of the candidate, and the court thought that he probably would not have been taken back if he had not voted for that candidate, this was not held to be sufficient proof of bribery (*Lichfield Case*, *supra*).

A corrupt motive in the mind of the person bribed is not enough. The question is as to the intention of the person who bribes him (*Westminster Case* (1869), 1 O'M. & H. 89, 95).

Giving a voter a retainer to incapacitate him from voting for the other side is not bribery (*Cashel Case* (1869), 1 O'M. & H. 286, 289).

A corrupt payment of illegal expenses incurred at a previous election to prevent people from talking is illegal if the object be to secure the votes of those people (*Coventry Case* (1869), 1 O'M. & H. 97).

Where a person called on a certain woman just before the election and asked her to take one candidate's bills out of a window and replace them by the bills of the other candidate, saying that he would make it worth her while to do so, this was held not to be bribery (*St. George's Division Case* (1896), 5 O'M. & H. 89, 90). If a man asks another to shout for So-and-so and says that he will give him a pot of beer for doing so, the court will not consider that to be bribery; but if he gives him a guinea—an inordinate price for a shout—the court would come to an opposite conclusion (*ibid.*, *per* POLLOCK, B., at p. 91. Compare *Norwich Case* (1871), 2 O'M. & H. 38, 42).

Where money was alleged to have been distributed to non-voters in the expectation that they would spend it in drink at the publichouses and thus indirectly influence the votes of the publicans, O'BRIEN, J., in Ireland, said: "Such a provision as this was not contemplated as being within the provisions of the Act" (*Youghal Case* (1869), 1 O'M. & H. 291, 294).

To pay a man to personate a voter was held to be bribery by a parliamentary committee (*Lisburn Case* (1863), Wolf. & B. 221, 225).

SECT. 1. Parliamentary.

Bribery.

or refrain from voting, or corruptly (*m*) does any such act as aforesaid on account of such voter having voted (*n*) or refrained from voting at any election (*o*).

(2) Every person who, directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure any office (*p*), place, or employment to or for any voter (*q*), or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or corruptly (*r*) does any such act as aforesaid on account of any voter having voted or refrained from voting at any election (*s*).

(3) Every person who directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer,

(*m*) "Corruptly" means "with the object and intention of doing that which the statute intended to forbid" (*North Norfolk Case* (1869), 1 O'M. & H. 236, 242; *Carrickfergus Case* (1880), 3 O'M. & H. 90). See also *Montgomery Boroughs Case* (1892), as reported in Jelf's Corrupt and Illegal Practices Prevention Acts (ed. 1905), p. 53. The vice-chairman of one of the respondent's election committees was proved during a bout of heavy drinking to have tendered money to a voter and to have asked the man to vote for the respondent. FLETCHER MOULTON, Q.C., for the petitioner, argued that this was bribery by an agent. JELF, Q.C., for the respondent, said that there could be no corrupt motives where there was no corrupt mind, and no corrupt mind where there was no mind at all. WILLS, J., decided in favour of the petitioner, but POLLOCK, B., dissented. He put it in this way. It was proved that this vice-chairman was at normal times an honest and respectable man, trusted in business matters by persons of all classes around him. The election agent had sworn that he knew nothing of his habit of intemperance: it was impossible to hold that this man had been made an agent for bribery: if the candidate and his election agent had known of his frailty, this very knowledge would have prevented them from selecting him to do one of the very nicest acts of criminality known to mankind. He therefore found as a fact that there was no bribery.

(*n*) Bribery after the election is a difficult charge to establish (*Norwich Case* (1859), Wolf. & B. 58, 62); but if clearly made out it is sufficient to avoid the election (*Harwich Case* (1880), 3 O'M. & H. 61, 70). Where a corrupt expectation on the part of the voter was followed by payment on behalf of the candidate, that voter's vote was struck off by a parliamentary committee (*Dublin Case* (1836), Falc. & Fitz. 88, 204). And "head money," "market money," and "dinner money" paid after the election to voters in pursuance of an understanding avoided the election (*Newcastle-under-Lyme Case* (1842), Bar. & Aust. 436, 453; *Durham Case* (1843), Bar. & Arn. 201, 215).

(*o*) Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 2 (1); Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 3. It is to be observed that the expression "person" includes an association or body of persons, corporate or unincorporate, and, where any act is done by any such association or body, the members of such association or body who have taken part in the commission of such act are liable to any fine or punishment imposed for the same by the Act of 1883 (*ibid.*, s. 64).

(*p*) A seat on a town council may be the means of bribery within this provision, because it is an office of honour and dignity and the natural and fair object of reasonable ambition on the part of many electors (*Waterford Case* (1870), 2 O'M. & H. 24, 25).

(*q*) A voter is a person who has or who claims to have any right to vote in the election of a member or members to serve in Parliament (Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 38).

(*r*) "Corruptly." See note (*a*), p. 290, *post*.

(*s*) Corrupt Practices Act, 1854 (17 & 18 Vict. c. 102), s. 2 (2); Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51 s. 3.

promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament (*t*), or the vote of any voter at any election (*a*).

(4) Every person who upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement procures or engages, promises, or endeavours to procure the return of any person to serve in Parliament, or the vote of any voter at any election (*b*);

Bribery.

(5) Every person who advances or pays or causes to be paid any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election (*c*). But this enactment does not extend to money paid or agreed to be paid for or on account of any legal expense of the candidate (*d*) *bonâ fide* incurred at or concerning any election (*e*).

(6) Every voter (*f*) who before or during any election directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for (*g*) any money, gift, loan, or valuable consideration, office, place, or employment for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election (*h*).

(7) Every person who after any election (*i*) directly or indirectly,

(*t*) Corruption at a test ballot, having for its object to decide which of two persons should be put forward by one of the political parties in the constituency as the candidate of that party, was held to be within this provision. The object of the test ballot was virtually to return a member to Parliament. The election was accordingly avoided by reason of such corruption (*Britt* v. *Robinson* (1870), L. R. 5 C. P. 503, 509).

(*a*) Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 2 (3); Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 3.

(*b*) Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 2 (4); Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 3.

(*c*) Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 2 (5); Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 3.

(*d*) The words "of the candidate" are not in the section, but the proviso has been held to relate merely to the expenses of the candidate. To pay the expenses of voters on condition of their voting or abstaining from voting is unquestionably bribery (*Coventry Case* (1869), 1 O'M. & H. 97, 101).

(*e*) Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 2 (5); Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 3.

(*f*) A voter is a person who has or who claims to have any right to vote in the election of a member or members to serve in Parliament (Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 38).

(*g*) "Contracts for" must be distinguished from "offers." The offer by a voter to sell his vote is not an offence (*Mallow Case* (1870), 2 O'M. & H. 18, 22; see also *Ipswich Case* (1835), Kn. & Omb. 332). Where a person admitted that he had been offered money by one side and then offered to vote for the other side if that other side would give him money, it was held by a parliamentary committee that this did not invalidate the vote which he did give.

(*h*) Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 3 (1); Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 53.

(*i*) A bribe paid after the election on account of a voter having voted in a particular manner, which formerly was held to be no offence within 2 Geo. 2, c. 24, s. 57 (*Huntingtower (Lord)* v. *Gardiner* (1823), 1 B. & C. 297; compare *Brecon Case* (1871), 2 O'M. & H. 43, 44), if clearly established, is sufficient to avoid the election (*Harwich Case* (1880), 3 O'M. & H. 61, 70). But see *Caldicott* v.

SECT. 1. Parliamentary.

by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election (*k*).

(8) Any person who either directly or indirectly corruptly pays any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, and any candidate or other person either directly or indirectly paying any rate on behalf of any voter for the purpose of inducing him (*l*) to vote or refrain from voting, and any person on whose behalf and with whose privity any such payment is made (*m*).

Proof of bribery.

560. Due proof of a single act of bribery by the candidate or his agents, however insignificant that act may be, is sufficient to invalidate the election (*n*). The judges are not at liberty to weigh its importance (*o*), nor can they allow any excuse, whatever the circumstances may be, such as they can allow in certain conditions in cases of treating or undue influence by agents (*p*). For this reason clear and unequivocal proof is required before a case of bribery will be held to have been established (*q*). Suspicion is not sufficient (*r*), and the confession of the person alleged to have been bribed is not conclusive (*s*). Bribery, however, may be implied from the circumstances of the case (*t*), and the court is not bound by the strict practice applicable to criminal cases, but may act on the uncorroborated testimony of an accomplice (*a*).

Worcester Election Commissioners (1907), 21 Cox, C. C. 404, where BIGHAM, J., held that payments after the close of the poll must be connected with an agreement or promise before.

(*k*) Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 3 (2); Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 3.

(*l*) It is essential to prove that it was done to induce the voter to vote for that person on whose behalf the payment was made (*Cheltenham Case* (1869), 1 O'M. & H. 62, 63). Where an agent of the Liberal candidate, believing a certain person who could not afford to pay his rates to be a Liberal, paid that person's rates, but said nothing to him about his vote, this was held not to be within the section (*Oldham Case* (1869), 1 O'M. & H. 151, 165). But in *R.* v. *Bridgnorth Corporation* (1839), 10 Ad. & El. 66, DENMAN, C.J., at p. 69, said: "Payment of rates to entitle a person to be placed on the burgess list under 5 & 6 Will. 4, c. 76, s. 9, must be by the party's own act, otherwise there would be danger of the most enormous bribery."

(*m*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 49; Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 3. As to Scotland, see Representation of the People (Scotland) Act, 1868 (31 & 32 Vict. c. 48), s. 49. As to corrupt payment of registration fees in Scotch universities, see Universities Elections Amendment (Scotland) Act, 1881 (44 & 45 Vict. c. 40), s. 2.

(*n*) *Plymouth Case* (1880), 3 O'M. & H. 107, 108; Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 4.

(*o*) *Shrewsbury Case* (1870), 2 O'M. & H. 36, 37; *Norwich Case* (1871), 2 O'M. & H. 38, 41.

(*p*) See Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 22.

(*q*) *Lichfield Case* (1869), 1 O'M. & H. 22, 28.

(*r*) *Ibid.*

(*s*) *Stroud Case* (1874), 2 O'M. & H. 107, 108.

(*t*) *Ipswich Case* (1857), Wolf. & D. 173, 179.

(*a*) *M'Clory* v. *Wright* (1860), 10 I. C. L. R. 514. In a case of bribery it was

The court strips the proceeding in each case of every colour, every dress, and every shape to discover its real and true nature (*b*). Thus colourable charity (*c*), colourable employment (*d*),

also held in Ireland that the judge was not bound to tell the jury that they must give the alleged offender the benefit of any doubt which they might entertain upon the matter (*Magee* v. *Mark* (1861), 11 I. C. L. R. 449). A postal order need not be produced in order to prove what was received by the voter when the money was sent by means of such order (*Londonderry Case* (1886), 4 O'M. & H. 96, 103). A note may be given in evidence, though not stamped, to prove bribery by means of a colourable security, which security was the note in question (*Dover* v. *Maestaer* (1803), 5 Esp. 92). Bribery may be made the subject of evidence before agency is proved if there is a reasonable expectation of proving the agency afterwards (*Bristol Case* (1870), 2 O'M. & H. 27, 29; *Guildford Case* (1869), 1 O'M. & H. 13, 14; and see Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 17). All the circumstances, such as the independence of the source from which the evidence comes, are to be taken into consideration. "People will delude themselves," said GROVE, J., "if they suppose that by keeping within the *dicta* or expressions of the judges they can creep out of their difficulties. It is virtually a conflict of intellect. Corruption will try to beat the law; but, generally speaking—and I think in the long run I may say universally—the law will end in defeating corruption" (*Wakefield Case* (1874), 2 O'M. & H. 100).

(*b*) *Belfast Case* (1869), 1 O'M. & H. 281, 284; and compare *Sulston* v. *Norton* (1761), 3 Burr. 1235.

(*c*) *Bonâ fide* charity, where impartial, has always been allowed (*Maldon Case*, Wolf. & D. 162, 163). While colourable charity is a specious and subtle form of bribery, it is no crime for a man simply to bestow gifts on his constituents (*Plymouth Case* (1880), 3 O'M. & H. 107, 110). BRAMWELL, B., in the *Windsor Case* (1874), 2 O'M. & H. 88, said, at p. 90: "A man is not to refrain from doing that which he legitimately might have done on account of the existence of a motive which by itself would have been an illegitimate motive." So it was held also in the *Carrickfergus Case* (1880), 3 O'M. & H. 90; but POLLOCK, B., and BRUCE, J., disapproved this case, and said that the court must take all the facts into consideration and must then answer the question, "Was the motive of the act in question true charity, or was it done in order to corrupt the minds of some of the recipients?" (*St. George's Division Case* (1896), 5 O'M. & H. 81, 91, 94). It is not possible by any *ex post facto* act to make that which was legal at the time illegal and criminal (*Lichfield Division Case* (1895), 5 O'M. & H. 27).

Though colourable charity by a candidate at an election may be bribery, yet an isolated case in circumstances of great distress will probably not be regarded as such (*Windsor Case* (1869), 1 O'M. & H. 1, 2). A distribution of coals by the candidate's agent to persons who were not suitable objects of charity has been held to be bribery (*Malcolm* v. *Parry* (1874), L. R. 9 C. P. 610. Compare *Stafford Case* (1869), 1 O'M. & H. 228, 230, where charity distributed by the election agent was held to have been "excessive").

Subscriptions to charities are not readily regarded as bribery, though charity may be "stimulated by gratitude or hope of favours to come" (*Westbury Case* (1869), 1 O'M. & H. 47, 49).

(*d*) Colourable employment of an excessive number of messengers who rendered no adequate services for the remuneration given them was held by parliamentary committees to be bribery (*Cambridge Case* (1857), Wolf. & D. 28; *Oxford Case* (1857), Wolf. & D. 106, 109). The number of paid messengers is now limited by statute (Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), Sched. I., Part I., rr. 4—6. See pp. 268, 269, *ante*).

Colourable employment of any person to render valueless services avoids the election (*Buxton* v. *Garfit* (1880), 44 L. T. 287). Payment of wages for a day's work not done is bribery, especially where the election agent is consulted on the matter, and rosettes etc. are given to the persons so paid (*Gravesend Case* (1880), 3 O'M. & H. 81, 84).

But over-payments made to agents were held not to be bribery in the *Youghal Case* (1869), 1 O'M. & H. 291, 296. Payments to voters for attending registration proceedings are lawful if made *bonâ fide* for that purpose, but not otherwise (*Taunton*

SECT. 1. Parliamentary.

and colourable purchases (*e*) will all fail to cloak a corrupt act. The court has always refused to give any exhaustive definitions on the subject, and has always looked to the exact facts of each case to discover the character of the transaction. The evidence necessary to establish bribery must not be of a general description, but must show that particular persons have been bribed (*f*), except in the case of general corruption so widespread that it may reasonably be supposed to have affected the result, in which case it would vitiate the election at common law (*g*). General evidence may, however, be given to show what the character of particular acts has presumably been (*h*).

Instances of bribery.

561. The payment to a voter of his travelling expenses in order to induce him to vote is bribery (*i*), and, in certain conditions, an illegal practice (*k*). If it is brought home to a candidate

Case (1869), 1 O'M. & H. 181). *Bonâ fide* employment of those whose services a man needs is not bribery, just as it is not bribery to give a bed to a guest in the giver's own station of life that he may vote (*Penryn Case* (1869), 1 O'M. & H. 127, 129).

Payment of wages may or may not be bribery according to circumstances. It might be charity. It would be impossible to find that it was corruptly done unless there had been some previous engagement or something else to make that wrong which would otherwise be right (*Stroud Case* (1874), 2 O'M. & H. 179, 183).

The court asks such questions as this: "Can we suppose that those who employed the men intended to neutralise their votes?" It is immaterial whether the object is to gain over voters from the other side or to prevent them from going over to that side. If the object is to engage one voter to vote for his employer who would otherwise vote for his opponent, the election will be void (*Boston Case* (1880), 3 O'M. & H. 151, 152).

(*e*) *E.g.*, buying pigs or horses above their value (*Huddersfield Case* (1859), Wolf. & B. 28, 32; *Cockermouth Case* (1853), 2 Pow. R. & D. 164, 167), if done to influence votes (*Harwich Case* (1848), 1 Pow. R. & D. 71, 75). The hiring of rooms for no object has been held to be bribery (*Huddersfield Case, supra; Cashel Case* (1869), 1 O'M. & H. 286). Colourable hiring of publichouses to secure the votes of the publicans was held to be bribery (*Sandwich Case* (1880), 3 O'M. & H. 158); likewise a colourable payment for the expenses of a past election (*Cashel Case, supra*).

(*f*) Thus a general conversation as to a candidate's wealth and liberality is not an offer to bribe (*Northallerton Case* (1869), 1 O'M. & H. 167, 168).

(*g*) See p. 279, *ante;* and see the common law of bribery further discussed, *Evesham Case* (1838), Falc. & Fitz. 504, 518; 4 Co. Inst. 23.

(*h*) *Beverley Case* (1869), 1 O'M. & H. 143, 144, 145.

(*i*) *Cooper* v. *Slade* (1857), 6 H. L. Cas. 746; *Dublin Case* (1869), 1 O'M. & H. 270, 273; *Packard* v. *Collings* (1886), 54 L. T. 619; and see *Horsham Case* (1876), 3 O'M. & H. 52. But GRANTHAM, J., in the *Maidstone Case* (1906), 5 O'M. & H. 200, 203, took a different view, as did the parliamentary committee in the *Wareham Case* (1857), Wolf. & D. 85, 88. In *Bremridge* v. *Campbell* (1831), 5 C. & P. 186, the facts were left to the jury; and it was laid down that an agreement by both parties to pay such travelling expenses will not prevent it from being bribery.

Where the expenses were paid after the election without any promise or understanding so to pay them having been made before the election, it was held that no case of bribery had been established, although more than the exact amount was paid (*Rigden* v. *Passmore Edwards* (1880), 44 L. T. 192). But in another case where the facts were similar, but where it was clear that the voter knew what he was wanted for, and there was no doubt that he expected to be paid, it was held that there had been bribery (*Tomline* v. *Tyler* (*Sir H.*) (1880), 44 L. T. 187).

(*k*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 7, 14. See p. 294, *post.*

personally, or to his agents, as bribery, it is a corrupt practice, and one which cannot be excused (*l*).

Nothing in the law relating to parliamentary elections makes it illegal for an employer to permit electors in his employment to absent themselves for a reasonable time for the purpose of voting without having any deduction from their salaries or wages on account of such absence, if such permission is, so far as practicable without injury to the business of the employer, given equally to all persons alike who are at the time in his employment, and if such permission is not given with a view of inducing any person to record his vote for any particular candidate, and is not refused to any person for the purpose of preventing such person from recording his vote for any particular candidate (*m*).

Instances of bribery.

562. The payment of a just claim will not lightly be taken to be bribery (*n*).

The date of the alleged act of bribery is only one of the circumstances to be taken into consideration, and things done long before or long after the election may be taken into account (*o*).

A corrupt agreement to vote for a certain candidate, the benefit of which is afterwards taken over and adopted by another candidate, is bribery, for which the latter may be held liable (*p*).

A corrupt act done with a view to the betrayal of the candidate on whose behalf it purports to be done is not bribery for which the latter can be held liable (*q*).

A wager on the result of the election may be bribery, but whether it will be so or not depends once more upon whether the intention was corrupt (*r*).

Treating.

563. Treating, again, is a corrupt practice (*s*). The following persons (*t*) are guilty of treating:—

(*l*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 3. Bribery is not mentioned in s. 22.

(*m*) Parliamentary Elections Corrupt Practices Act, 1885 (48 & 49 Vict. c. 56), s. 1. This Act is not to be construed to make illegal any act which would not have been illegal if this Act had not been passed (*ibid.*, s. 2). All the facts will be considered, and the payments must be reasonable (*Aylesbury Case* (1886), 4 O'M. & H. 59, 62). The giving of a holiday, when none had been given on a previous occasion, was held to be bribery in *Truscott* v. *Bevan* (1880), 44 L. T. 64.

(*n*) *Galway Case* (1857), Wolf. & D. 136, 142. But the promise of payment of an outstanding election account was held to be bribery in the *Sligo Case* (1853), 2 Pow. R. & D. 256, 257.

(*o*) *Sligo Case* (1869), 1 O'M. & H. 300, 302; *Stroud Case* (1869), 1 O'M. & H. 302; *Cheltenham Case* (*2nd Case*) (1848), 1 Pow. R. & D. 224, 225; *Southampton Case* (1869), 1 O'M. & H. 222. If a man were to say, "Here is £5 if you will promise to vote for me whenever I am a candidate," and if he became a candidate ten years afterwards, it would be bribery (*Stroud Case*, *supra*).

(*p*) *Dover Case* (1860), Wolf. & B. 121, 126, 127.

(*q*) *Stafford Case* (1869), 1 O'M. & H. 228, 230.

(*r*) See *Youghal Case* (1838), Falc. & Fitz. 385, 406; *Monmouth Case* (1835), Kn. & Omb. 408, 416; *New Windsor Case* (1835), Kn. & Omb. 139, 194. Such a wager is illegal at common law (*Allen* v. *Hearn* (1785), 1 Term Rep. 56).

(*s*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 3. As to when treating may also be bribery, see note (*i*), p. 282, *ante*.

(*t*) It is to be observed that the expression "person" includes an association or body of persons, corporate or unincorporate, so that when any act is done by any

SECT. 1. Parliamentary.

(1) Any person who corruptly (*u*), by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election or on account of such person or any other person having voted or refrained from voting at such election or being about to vote or refrain from voting at such election (*a*).

(2) Every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision (*b*).

Treating intended to secure general popularity and so to influence votes is corrupt treating and a corrupt practice (*c*).

Must be corrupt.

564. The essence of the offence of treating is that it should be corrupt. Treating, in fact, is often innocent; and *primâ facie* it will be taken so to be (*d*).

Where refreshments are a mere incident of a political meeting, there is no offence; but if persons are gathered together merely

such association or body the members of such association or body who have taken part in the commission of such act are to be liable to any fine or punishment imposed for the same by the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 64.

(*u*) "Corruptly" means with the intention of doing that which is forbidden by the statute (*Great Yarmouth Borough Case* (1906), 5 O'M. & H. 176, 196). See also *Montgomery Boroughs Case* (1892), as reported in Jelf's Corrupt Practices Prevention Acts (ed. 1905), at p. 53; see p. 284, note (*m*), *ante*.

(*a*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 1 (1).

(*b*) *Ibid.*, s. 1 (2). An "elector" means any person whose name is for the time being on the register roll or book containing the names of the persons entitled to vote at the election with reference to which the expression is used (*ibid.*, s. 64).

(*c*) See the *Hexham Division Case* (1892), Day, 93. Compare *Wallingford Case* (1869), 1 O'M. & H. 59, and *Longford Case* (1870), 2 O'M. & H. 15, though these cases would not be conclusive upon the point, as they were decided upon different words of an earlier Act, which were more favourable to the view taken.

(*d*) *Aylesbury Case* (1886), 4 O'M. & H. 59, 63. Compare *Haggerston Division Case* (1896), 5 O'M. & H. 68, 72, where on the facts of the particular case the judges differed. The previous and habitual conduct of the alleged offender will be considered. Thus, where a man has habitually given a school feast, the presumption will be that a school feast given by that man when he is a candidate is not corrupt (*Aylesbury Case, supra*). That form of treating which exists occasionally between social equals, where first one treats and then another, will be considered by the court as a form of hospitality, and not as corrupt treating. Nor are certain kinds of treating which exist in relation to business matters, such as marking the conclusion of a bargain with the customary and complimentary refreshment, to be regarded as corrupt treating. Corrupt treating is an expression which applies rather to that sort of treating which exists when the superior treats his inferior, which gives the former an influence over the latter, and secures his goodwill. Not, however, to all cases of this kind does the corrupt treating of which the statute speaks refer. It is not applicable to a return made for small services rendered, for instance, to a porter, or a guard, or the servants of the person treating, nor where the object is to acquire general goodwill. It must have reference to some election and be for the purpose of influencing some vote (*Norwich Case* (1886), 4 O'M. & H. 84, 91). If you give drink to a man with the intention of confirming his vote and keeping up the party zeal of those believed to be already supporting your candidate, that is corrupt treating (*Bodmin Division Case* (1906), 5 O'M. & H. 225, 231).

to gratify their appetites and so influence their votes, then it is corrupt treating (*e*). It is not necessarily corrupt, however, to attract people to meetings by offering refreshments of a moderate kind (*f*). All such circumstances as the open doing of whatever is done, the inclusion of persons who are not voters in the invitation, and the absence of undeserving persons from the class benefited will be taken into consideration in favour of the party alleged to be guilty of corrupt treating (*g*).

The time at which the act is done is also a relevant consideration. A corrupt act is not the less corrupt because it is done a long time before the election, but in determining whether it is reasonable to conclude that an act is done with a view to influence votes, the element of time becomes exceedingly material (*h*).

A promise to treat may amount to the offence of corrupt treating (*i*).

Custom is only relevant as having some bearing on the intent of a particular individual (*k*).

The offence of corrupt treating, unlike that of bribery, may in certain circumstances be excused by the Court, but not if the candidate is personally guilty of the act (*l*).

565. Undue influence is also a corrupt practice (*m*). The following persons (*n*) are guilty of undue influence :— Undue influence.

(1) Every person who directly or indirectly, by himself or by

(*e*) *Rochester Borough Case* (1892), 4 O'M. & H. 156, 157, where a threepenny ticket entitled the holder to partake of claret etc. and sandwiches.

The practice of political associations giving entertainments, picnics, suppers, teas, sports etc., has been judicially described as "a practice dangerously akin to corrupt treating," and one which, "if indulged in by a candidate, would certainly amount to corrupt treating" (*Hexham Division Case* (1892), 4 O'M. & H. 143, 150). But this is "not an intimation that any of the transactions referred to are to be taken alone as amounting to corrupt treating." It is always a question of intention, and the court looks to the whole of the circumstances in each case (*Rochester Borough Case* (1892), 4 O'M. & H. 156).

Where a candidate is in the midst of people who are drinking and the worse for drink, it will not necessarily be inferred that because there was drinking there must have been treating (*Southampton Borough Case* (1895), 5 O'M. & H. 17).

(*f*) *St. George's Division Case* (1896), 5 O'M. & H. 89, 99; *Great Yarmouth Borough Case* (1906), 5 O'M. & H. 176, 194. The question of corrupt treating must be in each case a question of fact. If the refreshments provided were excessive, if the occasions were numerous, and if there were other circumstances calculated to excite suspicion, a corrupt intention might be inferred (*St. George's Division Case, supra*).

(*g*) *St. George's Division Case, supra*, at p. 92.

(*h*) *St. George's Division Case, supra*, at pp. 100, 101. Compare *Lancaster Division Case* (1896), 5 O'M. & H. 39, 43, where, although the person who eventually became the election agent took part in an entertainment given by a certain political association, it was held that there had not in the circumstances been any corrupt treating for which his principal, the candidate, was responsible.

(*i*) *Montgomery Boroughs Case* (1892), 4 O'M. & H. 167, 169.

(*k*) "Otherwise even bribery might be justified upon the ground that it was the custom to take half a crown for a vote" (*per* CHANNELL, J., *Great Yarmouth Borough Case, supra*, at p. 193).

(*l*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51) s. 22. See pp. 398, 399, *post*.

(*m*) *Ibid.*, s. 3.

(*n*) It is to be observed that the expression "person" includes an association or

SECT. 1. Parliamentary.

any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal (*o*) or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election (*p*); and

(2) Every person who by abduction, duress, or any fraudulent device or contrivance succeeds (*q*) in impeding or preventing the free exercise of the franchise of any elector, or thereby succeeds in compelling, inducing, or prevailing upon any elector either to give or refrain from giving his vote at any election (*r*).

Personation.

566. Personation is a corrupt practice (*s*). The following persons are guilty of personation:—

(1) Every person who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person (*a*); and

(2) Every person who, having voted once at an election, applies at the same election for a ballot paper in his own name (*b*).

The aiding, abetting, counselling, or procuring of the offence of personation is also a corrupt practice (*c*).

If the name was placed on the register by the overseers with the intention of enabling the applicant to vote, it will not be personation on his part to apply for the ballot paper in that name, though the name be not in fact his own (*d*).

Mens rea.

567. *Mens rea* is an essential ingredient in personation (*e*), and an agent who honestly believes that the person whom he

body of persons, corporate or unincorporate, or that where any act is done by any such association or body the members of such association or body who have taken part in the commission of such act are liable to any fine or punishment imposed for the same by the Act (Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 64).

(*o*) *E.g.*, threatening a voter to withdraw custom to induce that voter to vote or refrain from voting (*R.* v. *Barnwell* (1857), 5 W. R. 557).

(*p*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 2, first part of the section. This includes the case of the clergy declaring it to be a sin to vote in a particular manner, or threatening to refuse the sacraments for so doing (*Meath Southern Division Case* (1892), 4 O'M. & H. 130, 131; *Meath Northern Division Case* (1892), 4 O'M. & H. 185, 188. Compare *Galway Case* (1869), 1 O'M. & H. 303; *Longford Case* (1870), 2 O'M. & H. 6). There is nothing, however, to prevent the clergy from canvassing in a proper manner like other people (*ibid.*).

(*q*) *Stepney Case* (1886), 4 O'M. & H. 34, 57, where, evidence of success not being forthcoming, a fraudulent device was held not to vitiate an election. Success is not a necessary ingredient of the offences mentioned in the first part of the section.

(*r*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 2, second part of the section.

(*s*) *Ibid.*, s. 3.

(*a*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 24; Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 3, and Sched. III., Part III.

(*b*) *Ibid.*

(*c*) *Ibid.*

(*d*) *R.* v. *Fox* (1887), 16 Cox, C. C. 166.

(*e*) *Gloucester Case* (1873), 2 O'M. & H. 59, 63. See especially *Maslyn's Case*, *ibid.*, 63. Compare *Stepney Case* (1886), 4 O'M. & H. 34, 44.

is instigating to vote is the person whose name is upon the register is not guilty of corrupt practice, although the person whose vote is in question may know that he is not the person whose name is upon the register (*f*). On the same principle, if a person innocently votes in the name of another and the only charge in the petition is a charge of personation, the vote is not struck off, since the innocent voting in another's name is a matter which is not covered by a charge of personation (*g*).

But if it is once shown that a candidate has employed an agent who is capable of doing such a thing as persuading another fraudulently to personate and obtain a vote, knowing that he is not entitled to it, that candidate must suffer the penalty of having trusted such a person with the management of his election (*h*).

Striking off.

568. If the person whose name is on the register is shown not to have voted, and it is also shown that a vote has been given in his name, and nothing more is shown, the vote will be struck off on a scrutiny (*i*).

Agency.

569. Evidence of personation may be given before agency is proved.

There is no authority for the avoidance of an election at common law on the ground of widespread personation, irrespective of agency, on the analogy of general corruption (*k*).

False statutory statement.

570. It is a corrupt practice for either the candidate or his election agent to make a false statement in the declarations (*l*) they are required to make after the election (*m*).

Fraud of agent.

571. It would seem that any absolute fraud by an agent of the candidate might vitiate an election at common law (*n*).

(iii.) *Illegal Practices.*

Illegal payments.

572. It is an illegal practice, in the absence of such exception as may be specially allowed by the court by virtue of their statutory

(*f*) *Gloucester Case* (1873), 2 O'M. & H. 59, 63. See especially *Pickard's Case. Ibid.* And conversely the agent may be guilty though the voter may be innocent. *Hexham Case* (1892), Day, 68.

(*g*) *Athlone Case* (1880), 3 O'M. & H. 57, 59. There the son, who succeeded his father, having the same name, voted in the name of his father, who was in fact the person intended on the register.

(*h*) *Gloucester Case, supra.*

(*i*) *Finsbury (Central) Case* (1892), 4 O'M. & H. 171, 175.

(*k*) *Belfast Borough Western Division Case* (1886), 4 O'M. & H. 105, 108. In this Irish case evidence that persons who were not agents of the candidates had been guilty of personation was admitted, but the court eventually stated that there was no authority for avoiding the election on the grounds of general personation.

(*l*) See pp. 335, 336, *post.*

(*m*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 33 (7). For the result of the commission of corrupt practices, see p. 524, *post.*

(*n*) As, for instance, the wholesale instigation by such an agent of personation by other person, apart from statute altogether (*per* WILLES, J., in *Coventry Case* (1869), 1 O'M. & H. 97, 105). There was no such offence as personation before the Ballot Act, 1872 (35 & 36 Vict. c. 33), and the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51).

SECT. 1. Parliamentary.

powers in that behalf (*o*), if any payment or contract for payment is knowingly made for the purpose of promoting or procuring the election of a candidate at any election on account of the conveyance of electors to or from the poll, whether for the hiring of horses, or carriages, or for railway fares or otherwise (*p*), except that where the nature of a county is such that any electors residing therein are unable at an election for such county to reach their polling place without crossing the sea or a branch or arm thereof the prohibition is not to prevent the provision of means for conveying such electors by sea to their polling place (*q*). The prohibition does extend to a payment or contract for payment made for the purpose of procuring or promoting the election of a candidate at an election in respect of the stabling and baiting of horses sent from a distance for the purpose of conveying voters to the poll (*r*). Any person knowingly making such a prohibited payment or contract, whether it be made before, during, or after the election, and whether he knows the same to be in contravention of the Act of Parliament or not, is guilty of an illegal practice (*s*); and any person receiving such a payment or being party to such a contract is similarly guilty if he knows the same to be in contravention of the Act (*t*).

Advertisement hoardings etc.

573. It is an illegal practice, in the absence of such exception as aforesaid (*u*), if any payment or contract for payment is made to an elector, for the purpose of promoting or procuring such an election, on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice (*v*), except where it is that elector's ordinary business to exhibit for payment bills and advertisements, and the payment or contract is made in the ordinary course of business (*w*). The conditions which attach to the liability of the maker and receiver respectively of the payment are the same as in the last case (*x*).

Excessive committee rooms.

574. It is an illegal practice, in the absence of such exception as aforesaid, if any payment or contract for payment is made for the purpose of promoting or procuring such an election on account of any committee-room in excess of the number allowed by law (*y*).

(*o*) See pp. 398—404, *post*.

(*p*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 7 (1) (a). As to the circumstances in which this may also be regarded as bribery, see p. 288, *ante*.

(*q*) *Ibid.*, s. 48.

(*r*) *Lichfield Division Case* (1895), 5 O'M. & H. 27, 30, 31. The expenses of bringing one's own conveyances to the place where the election is being held may lawfully be paid, and this includes petrol for motor cars (*Hartlepool Case* (1910), *Times*, 4th May).

(*s*) *Southampton Borough Case* (1895), 5 O'M. & H. 17, 20.

(*t*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 7 (1) (b).

(*u*) See pp. 398—404, *post*.

(*v*) See also p. 302, *post*.

(*w*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 7 (3).

(*x*) *Ibid.*, s. 7 (2).

(*y*) *Ibid.*, s. 7 (1) (c). The expression "committee-room" does not include any house or room occupied by a candidate at an election as a dwelling by reason only of the candidate there transacting business with his agents in relation to such election; nor shall any room or building be deemed to be a committee-room

In this case also the conditions which attach to the liability of the maker and receiver of the payment respectively are the same as in the two previous cases (*z*). The number of committee-rooms which may lawfully be hired is in a borough one committee-room, and if the number of electors in the borough exceeds five hundred, then one for every complete five hundred electors, and if there is a number of electors over and above any complete five hundred, one for such number, although not amounting to a complete five hundred (*a*); in a county a central committee-room, and in addition one committee-room for each polling district in the county, and where the number of electors in a polling district exceeds five hundred one additional committee-room for every complete five hundred electors in such polling district over and above the first five hundred (*b*). Any number of committee-rooms on account of which no payment or contract for payment is made is permissible (*c*).

Excessive expenditure.

575. It is an illegal practice, subject to such an exception as aforesaid, if a candidate at an election or his election agent (*d*) knowingly pays any sum or incurs any expense, whether before, during, or after an election, on account of or in respect of the conduct or management of such election (*e*), in excess of the maximum amount allowed by law (*f*). There are three kinds of expenses which are not to be included in this maximum scale, namely, the personal expenses of the candidate (*g*), sums paid to the returning officer for his charges (*h*), and the expenses of conveying electors by sea to their polling places in the exceptional cases when this is allowed by law (*i*). Otherwise the maximum scale provides that in a borough, if the number of electors on the register does not

for this purpose by reason only of the candidate or any agent of the candidate addressing the electors, committeemen, or others (*ibid.*, s. 64).

(*z*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 7 (2).

(*a*) *Ibid.*, Sched. I., Part II., r. 6.

(*b*) *Ibid.*, Sched. I., Part II., r. 7.

(*c*) *Ibid.*, s. 7 (1) (c). *Expressio unius exclusio alterius.*

(*d*) *Ibid.*, s. 8. It is to be noted that, if any other agent of the candidate pays the sum or incurs the expense, the case will probably be objectionable on another ground, namely, as falling within s. 28 of the same Act. See p. 297, *post*.

(*e*) It is sometimes difficult to say what are expenses within the meaning of this provision. The court must look at all the facts, and must decide the question as though discharging the functions of a jury whether the expenses in question have been incurred "on account of or in respect of the conduct or management of such election." See pp. 297, 298, *post*, where these words are further discussed.

(*f*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 8; and see Sched. I.

(*g*) The "personal expenses" of the candidate is an expression which includes the reasonable travelling expenses of such candidate and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election (*ibid.*, s. 64). It is to be observed that this does not purport to be an exhaustive definition; and the phrase is usually stretched in practice so as to be made to cover the entertainment at hotels of friends, supporters and speakers, and the conveyance of such friends, supporters and speakers in hired vehicles to meetings and so forth. No decision has been given by any election court as to the legality of this interpretation of the section.

(*h*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), Sched. I., Part IV.

(*i*) *Ibid.*, s. 48, and see p. 294, *ante*.

SECT. 1. Parliamentary.

exceed two thousand, the maximum amount shall be £350, and if it does exceed two thousand the maximum amount shall be £380, and an additional £30 for every complete thousand electors above two thousand on the register (smaller amounts are prescribed for the case of Ireland (*j*)), and in a county, if the number of electors on the register does not exceed two thousand, the maximum amount shall be £650, and if it does exceed two thousand the maximum amount shall be £710 and an additional £60 for every complete thousand electors above two thousand (smaller amounts being again prescribed for the case of Ireland (*k*).)

Inducing prohibited persons to vote.

576. It is an illegal practice if any person votes or induces or procures any person to vote at any election knowing that he or such person is prohibited by any Act of Parliament from voting at such election (*l*). But the candidate is not liable in such a case, nor can his election be avoided, if this illegal practice is only committed by an agent who is not his election agent (*m*).

False statement as to withdrawal of candidate.

577. It is an illegal practice if any person before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate (*n*); but here again the candidate is not liable, nor can his election be avoided, if this illegal practice is only committed by an agent other than the election agent (*o*).

Absence of printer's impress.

578. It is an illegal practice if the candidate or the election agent of the candidate prints, publishes, or posts, or causes to be printed, published, or posted (*p*), any bill, placard, or poster having reference to the election which fails to bear upon the face thereof the name and address of the printer and publisher (*q*). If the

(*j*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), Sched. I., Part IV.

(*k*) *Ibid.* A trade union must not provide any of the election expenses out of its funds (*Osborne* v. *The Amalgamated Society of Railway Servants*, [1910] A. C. 87). This is a decision of the House of Lords. Some of their Lordships, however, based their decision on the ground that in the particular case the candidates were "delegates" of the trade union, which was contrary to public policy.

(*l*) *Ibid.*, s. 9 (1).

(*m*) *Ibid.*, s. 9 (3). Where a man voluntarily undertook the duties of a sub-agent without any payment or reward or promise of payment or reward, and when he voted believed that he would receive none, but after the election was over the election agent paid him on ascertaining that he had a surplus available for the purpose, and he did not tell the election agent he had voted, the person so voting was held to have committed an illegal practice (*Essex South-Western Division Case* (1886), 2 T. L. R. 388).

(*n*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 9 (2).

(*o*) *Ibid.*, s. 9 (3).

(*p*) Where the candidate's agent's brother gave the instructions for the printing of a certain address to be done for the said agent, and the cost was debited to the said agent, but not paid by him, it was held that he had not been proved to have printed or caused to be printed the address in question, though the address purported to be signed by such agent (*Bettesworth* v. *Allingham* (1885), 16 Q. B. D. 44).

(*q*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51),

offender is not the candidate or the election agent of a candidate, he will be liable on summary conviction to a fine not exceeding £100, but it will not be an illegal practice (*r*).

Payments made otherwise than through the election agent.

579. It is an illegal practice, subject to any lawfully allowed exceptions (*s*), if any payment, advance, or deposit is made by a candidate at an election, or by any agent on behalf of the candidate, or by any other person at any time, whether before, during, or after such election, in respect of any expenses incurred on account of or in respect of the conduct or management of such election, otherwise than by or through the election agent (*a*) of the candidate, whether acting in person or by a sub-agent; and it is an illegal practice if any money provided by a person other than the candidate for any expenses incurred on account of or in respect of the conduct or management of the election, whether as gift, loan, advance, or deposit, is paid otherwise than to the candidate or his election agent (*b*).

But this does not apply to a tender of security to, or any payment by, the returning officer, or to any sum disbursed by any person out of his own money for any small expense legally incurred by himself, if such sum is not repaid to him (*c*). The small expense here referred to is one which will cover such small payments as the hire of a cab by a canvasser in order to go round the constituency canvassing, or for postage etc. where the person paying is not and does not intend to be repaid (*d*).

If money is spent illegally in this connection by an agent of the candidate to promote his return, and that candidate is returned by the help of such money, the expenditure will cause him to lose his seat upon an election petition (*e*).

The court considers in every case upon all the facts (*f*) whether the payment in question is a payment "in respect of the conduct or management of such election." Thus the expenses of

s. 18. See *Alcock* v. *Emden* (1904), 68 J. P. 434; *Shrewsbury Case* (1885), 4 T. L. R. 160.

(*r*) Corrupt and Illegal Practices Act, 1883 (46 & 47 Vict. c. 51), s. 18.

(*s*) See pp. 398—404, *post*.

(*a*) Where a payment through a person other than the election agent was made by mistake, and the money was returned, and the transaction was honest and *bonâ fide*, the court held that no offence had been committed (*Monmouth Boroughs Case* (1901), 5 O'M. & H. 166, 170).

(*b*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 28.

(*c*) *Ibid.*

(*d*) *Norwich Case* (1886), 4 O'M. & H. 84, 89. Twenty pounds expended upon placards cannot be so excused, but half a crown expended upon cartoons might possibly meet with indulgence (*ibid.*).

(*e*) *Ipswich Case* (1886), 4 O'M. & H. 70, 74. Thus, where money was paid by one who was admitted to be an agent of the candidate in order to enable men to be hired for keeping order at a public meeting held by that candidate, this was held to be an illegal practice. Volunteers may be employed to keep order, and if serious disorder is apprehended, such volunteers should be sworn in as special constables (*ibid.*). Where certain payments had been made by the secretary of a political association on account of the election, and also, acting under the orders of such secretary, by a member of such association, and these payments were not included in the returns of the election agent, but the secretary of the parent association repaid to the member of the local branch the sums so paid by him, the court held that both these persons had committed illegal practices (*Buckrose Division Case* (1886), 4 O'M. & H. 110, 116).

(*f*) Taking into consideration the definition of a "candidate" (Corrupt and

SECT. 1. Parliamentary.

meetings held to induce the respondent to stand, and of a requisition to him for that purpose, are not expenses in respect of such election (*g*). Expenses connected with improving the registration of the borough in the interest of the candidate and of his party are not within the provision, nor is the starting of a newspaper advocating the candidate's political views. What are or are not such expenses is a question of fact for the court, discharging the functions of a jury, to decide (*h*).

Payments not made within prescribed time.

580. It is an illegal practice if an election agent pays otherwise than within the prescribed time (*i*) any expenses incurred by or on behalf of a candidate at an election which are incurred on account of or in respect of the conduct or management of such election, or pays at any time any claim which is barred by reason of its not having been sent in to him within the prescribed time (*k*). Subject to any exceptions allowed under the Act (*l*), the prescribed time for sending in claims is fourteen days, and that for payment twenty-eight days, after the day on which the candidates are declared elected (*m*). But if the candidate proves that the payment was made without his sanction or connivance, the election is not avoided, nor is the candidate to be subject to any incapacity under the Act on this ground alone (*n*).

Failure to make return as to expenses.

581. It is an illegal practice if without an authorised excuse (*o*) a candidate or an election agent fails to comply with the provisions of the Act as to the prescribed (*p*) return and declaration respecting election expenses (*q*).

False statements.

582. It is an illegal practice (*r*) if any person before or during any parliamentary election for the purpose of affecting the return

Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 64. See p. 295, *ante*).

(*g*) *Norwich Case* (1886), 4 O'M. & H. 84, 86. A political almanac ordered in October and delivered on the Christmas Day before the election was held not to be within the provision (*Great Yarmouth Borough Case* (1906), 5 O'M. & H. 176, 187).

(*h*) *Kennington Case* (1886), 4 O'M. & H. 93; compare *Lichfield Division Case* (1895), 5 O'M. & H. 27, 34. There is no general rule that lectures, even though given with the view of advancing the prospects of a particular candidate, are expenses incurred on account of the conduct or management of the election (*Haggerston Division Case* (1896), 5 O'M. & H. 68, 72). Where the candidate had taken a house in the constituency and built at the further end of the yard a room which he had furnished as a club-room, and which he allowed the Radical association to use as a club for its meetings, and where such room was used during the election as a committee-room, and the candidate paid all the expenses in connection with it, it was held that these were expenses which should have been returned through the election agent (*St. George's Division* (recriminatory) *Case* (1896), 5 O'M. & H. 103, 115).

(*i*) Prescribed by the same section.

(*k*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51) s. 29 (4) and s. 29 (2).

(*l*) See p. 404, *post*.

(*m*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 29 (5).

(*n*) *Ibid.*, s. 29 (6) and s. 29 (3). If it is disputed, it may be reckoned a disputed claim, and paid if the court gives leave. See s. 29 (7), *post*, p. 404.

(*o*) *Ibid.*, s. 34. See p. 405, *post*.

(*p*) *Ibid.*, s. 33. See p. 335, *post*.

(*q*) *Ibid.*

(*r*) As to the remedy by way of injunction, see p. 540, *post*.

of any candidate at such election makes or publishes any false statement of fact in relation to the personal character or conduct of such candidate (*s*), and the directors of any body or association making or publishing any such false statement will likewise be guilty of an illegal practice (*t*).

The false statement of fact need not be libellous at common law (*a*), so long as it is a statement which is calculated to influence the electors, as, for instance, a statement made in a hunting county that the candidate has shot a fox or a statement made to promoters of total abstinence that the candidate has taken a glass of wine (*b*). But it is essential that it should relate to the personal rather than the political character or conduct of the candidate (*c*).

It is irrelevant whether the statement complained of has or has not been provoked by a statement of a similar character made on the part of an opponent (*d*).

The words will be interpreted according to their real and true meaning, and not according to their literal sense (*e*).

No person is to be deemed guilty of such illegal practice if he can show that he had reasonable grounds for believing and did believe the statement made by him to be true (*f*). That must in each case depend upon the character and nature of the information given him (*g*).

A candidate, however, is not to be liable, nor is he to be subject, to any incapacity, nor is his election to be avoided, for any illegal practice under this provision committed by his agent other than his election agent, unless it can be shown that the candidate or his election agent has authorised or consented to the committing of such illegal practice by such other agent or has paid for the

(*s*) Corrupt and Illegal Practices Prevention Act, 1895 (58 & 59 Vict. c. 40), s. 1.

(*t*) *Ibid.*

(*a*) In some senses the words of the section are narrower and in some senses wider than is consistent with the law of libel (*St. George's Division* (recriminatory) *Case* (1896), 5 O'M. & H. 103, 104).

(*b*) *Sunderland Borough Case* (1896), 5 O'M. & H. 53, 62. This is not of course a decision that such words could not in any circumstances bear a defamatory meaning at common law, but that it is not necessary to give them such a defamatory meaning in order to bring them within this provision.

(*c*) *Cockermouth Division Case* (1901), 5 O'M. & H. 155, 164; *Attercliffe Division Case* (1906), 5 O'M. & H. 218. Compare *Anonymous Case*, reported in Jelf's Corrupt and Illegal Practices Prevention Acts (ed. 1905), p. 215. But see also *Chesterfield Case, Bayley* v. *Edmunds* (1895), 11 T. L. R. 537, C. A., where a charge that the candidate, "hypocritically feeling in his conscience that he was doing wrong for the purpose of making large profits for himself, locked out his workmen for a certain length of time, and that then, some time afterwards, he found that his conscience reproved him, and resolved he would starve them no longer," was held to be within the section. The words "Radical traitors" were held to be not within the section, as being a statement of opinion rather than of fact (*Ellis* v. *National Union of Conservative Associations* (1900), 109 L. T. Jo. 493).

(*d*) *Monmouth Boroughs Case* (1901), 5 O'M. & H. 166, 174.

(*e*) *Silver* v. *Benn* (1896), 12 T. L. R. 199, 200, C. A. KAY, L.J., speaks in that case of "what the passage meant to convey." This is inconsistent, however, with *dicta* in *Ellis* v. *National Union of Conservative Associations*, *supra*, where it is suggested that no innuendo can be shown in these cases.

(*f*) Corrupt and Illegal Practices Prevention Act, 1895 (58 & 59 Vict. c. 40), s. 2.

(*g*) *Sunderland Borough Case*, *supra*, at p. 65.

SECT. 1. Parliamentary.

circulation of the false statement constituting the illegal practice, or unless upon the hearing of an election petition the election court finds and reports that the election of such candidate was procured or materially assisted in consequence of the making or publishing of such false statement (*h*).

Disturbance of public meeting.

It is an illegal practice if at a political meeting (*i*) held in any parliamentary constituency between the date of the issue of the writ for the return of a member of Parliament for such constituency and the date at which a return to such writ is made, any person acts in a disorderly manner, or incites others to so act, for the purpose of preventing the transaction of the business for which the meeting was called together (*k*).

583. It is an illegal practice if a candidate or his election agent is personally guilty of either of the three statutory offences of "illegal payment," "illegal employment," or "illegal hiring" (*l*).

(iv.) *Illegal Payment and Illegal Employment.*

Illegal payment.

584. It is an illegal payment if any person knowingly provides money for any payment which is contrary to the provisions of the Corrupt and Illegal Practices Prevention Act, 1883, or for any expense incurred in excess of any maximum amount allowed by that Act, or for replacing any money expended in any such payment or expenses (*m*), except when the same may have been previously allowed, in pursuance of the Act of Parliament, to be an exception (*n*).

Again, if any person other than the election agent or a sub-agent appoints any polling agent, clerk, or messenger employed for payment on behalf of the candidate at an election, the payment will be an illegal payment (*o*), and if the money for it is knowingly provided by the candidate himself it will be, subject to any such exception as

(*h*) Corrupt and Illegal Practices Prevention Act, 1895 (58 & 59 Vict. c. 40), s. 4.

(*i*) The Act is for the protection of "lawful public meetings," and it is not clear how far a street meeting is a lawful meeting for this purpose. See *Leamington Case* (1909), 44 L. J. 662. Compare *Harrison* v. *Rutland* (*Duke*), [1893] 1 Q. B. 142, C. A.; *Dovaston* v. *Payne* (1795), 2 Hy. Bl. 527; *Beatty* v. *Gillbanks* (1882), 9 Q. B. D. 308; *R.* v. *Clarkson* (1892), 17 Cox, C. C. 483, C. C. R.; *Wise* v. *Dunning*, [1902] 1 K. B. 167.

(*k*) Public Meeting Act, 1908 (8 Edw. 7, c. 66), s. 1.

(*l*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 21 (2). It should be noted in connection with illegal payment that the expression "payment" includes any pecuniary or other reward, and the expressions "pecuniary reward" and "money" are to be deemed to include any office, place, or employment, and any valuable security or other equivalent for money, and any valuable consideration, and expressions referring to money are to be construed accordingly (*ibid.*, s. 64).

(*m*) *Ibid.*, s. 13. From this it would appear that the provision of money knowingly for any illegal employment or illegal hiring, or for any corrupt or illegal practice, may be charged also as an illegal payment, because it would be a payment contrary to the provisions etc. within s. 13.

(*n*) *Ibid.*, s. 13.

(*o*) *Ibid.*, s. 27 (1), shows that here again there would be a contravention of the Act, and therefore s. 13 applies.

aforesaid, an illegal practice (*p*). So, again, if any payment is made on account of any committee-room hired by any person other than the election agent or a sub-agent on behalf of the candidate (*q*). A contract whereby any expenses are incurred on account of or in respect of the conduct or management of an election is not enforceable against a candidate unless made by the candidate himself or by his election agent, either by himself or by his sub-agent. But it is provided that the inability thus created to enforce such contract will not relieve the candidate from the consequences of any corrupt or illegal practice having been committed by his agent (*a*).

Personal expenses.

585. It is an illegal payment and an illegal practice (*b*) if the candidate knowingly pays any personal expenses incurred by him on account of, or in connection with, or incidental to the election to a further amount than £100 otherwise than by the election agent (*c*).

Inducing withdrawal of candidate.

586. It is an illegal payment, and if the candidate or election agent be personally guilty an illegal practice (*d*), corruptly to induce or procure another person to withdraw from being a candidate at an election in consideration of a payment or promise of payment (*e*).

Band, flags, ribbons etc.

587. It is an illegal payment, and if the candidate or election agent be personally guilty an illegal practice (*f*), subject to such exception as may be allowed by the court under their statutory powers, to make before, during, or after an election a payment or a contract for payment for the purpose of promoting or procuring the election of a candidate at any election on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction (*g*). Any person being a party to such contract or receiving

(*p*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 21 (2).

(*q*) *Ibid.*, s. 27 (1), shows that here again there would be a contravention of the Act, and therefore s. 13 applies.

(*a*) *Ibid.*, s. 27 (2). See also *Nurton* v. *Dickson* (1860), 5 H. & N. 637, decided before the present statute.

(*b*) It is an illegal payment (Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 13), because such payment is contrary to the provisions of the Act. It is therefore an illegal practice (*ibid.*, s. 21 (2)), because by hypothesis the candidate is personally guilty. It might possibly be excused under s. 23 (see p. 399, *post*), if the candidate, though he made the payment "knowingly," yet did so by reason of inadvertence, or from other accidental miscalculation, or from some other reasonable cause of a like nature. But the other conditions of that section (which see) would have to be satisfied.

(*c*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 13, 21. The expression "personal expenses," as used with respect to the expenditure of any candidate in relation to any election, includes the reasonable travelling expenses of such candidate and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to such election (*ibid.*, s. 64); but see note (*g*), p. 295, *ante*.

(*d*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 21 (2).

(*e*) *Ibid.*, s. 15.

(*f*) *Ibid.*, s. 21 (2).

(*g*) *Ibid.*, s. 16. A payment made to repair the roof of a house damaged by the ropes of a banner was held not to be within this provision, the banner itself being

SECT. 1. Parliamentary.

such payment is also guilty of illegal payment, if he knew that the same was made contrary to law (*h*).

Illegal expenses.

588. It is an illegal employment, and if the candidate or his election agent be personally guilty an illegal practice (*i*), to engage or employ any person for payment (*k*) or promise (*l*) of payment for the purpose of promoting or procuring the election of a candidate at an election for any purpose or in any capacity whatever except for the prescribed purposes and in the prescribed capacities or except so far as payment is authorised by the Act of Parliament (*m*). In addition to the payments already mentioned as legalised, the following expenses are also legal expenses (*n*): The expenses of printing, the expenses of advertising, and the expenses of publishing, issuing, and distributing addresses and notices; the expenses of stationery, messages, postage, and telegrams; the expenses of holding public meetings.

Expenses otherwise legal may be incurred in respect of miscellaneous matters; but they must not exceed in the whole the maximum amount of £200 (*o*). Nor must the whole expenses exceed the maximum prescribed by the Act (*a*).

lawful because no payment or contract for payment had been made in respect of it (*Stepney Case* (1886), 4 O'M. & H. 34, 39).

Portraits on linen, furnished with a lath top and bottom, carried about and suspended across streets, have been held to be "banners," although more properly described as "marks of distinction" (*St. George's Division* (recriminatory) *Case* (1896), 5 O'M. & H. 103, 107—114. Compare *Stepney Borough Case* (1892), 4 O'M. & H. 178, 179—183).

Hat-cards, again, have been held to be a contravention of this provision, and, where they are charged in the election account and paid for by the election agent to be sufficient to avoid the election (*Walsall Borough Case* (1892), 4 O'M. & H. 123, 126. Compare *Pontefract Borough Case* (1893), 4 O'M. & H. 200; *Clare Eastern Division Case* (1892), 4 O'M. & H. 162). It is a question of fact in each case whether such things avoid the election (*Pontefract Borough Case, supra*). The *Walsall Borough Case, supra*, is "considered to have gone to the extreme verge of the law" (*Clare Eastern Division Case, supra*). Even bills and placards which are neither addresses nor notices may on the facts apparently be held to be marks of distinction (*Stepney Borough Case* (1892), 4 O'M. & H. 178, 179—183). Compare Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), Sched. 1., Part II., r. 3. The object of this provision is partly to prevent waste of money and partly to prevent a man from gaining a false show of popularity by laying out his money on flags, banners, and other things of that description (*per* CAVE, J., in *Stepney Borough Case, supra*; but compare *Walsall Borough Case, supra*).

(*h*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 16 (2).

(*i*) *Ibid.*, s. 21 (2).

(*k*) Payment includes any pecuniary reward or other reward, such as refreshments (*Barrow-in-Furness Case* (1886), 4 O'M. & H. 76, 82).

(*l*) A promise must be an actual express promise, and not such a promise as is inferred from the conduct of the parties (*Lichfield Division Case* (1895), 5 O'M. & H. 27, 29, 30).

(*m*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 17. The persons who may be legally employed for payment are enumerated on pp. 266—269, *ante*.

(*n*) *Ibid.*; Sched. I., Part I., shows that here again there would be a similar contravention of the Act, if any persons other than or in greater numbers than these are employed for payment; therefore s. 13 applies.

(*o*) *Ibid.*, Sched. I., Part III.

(*a*) *Ibid.*, Sched. I., Part IV. See p. 295, *ante*.

Any payment made in contravention of these limitations would be an illegal payment (*b*), and, if the candidate or his election agent were personally guilty, an illegal practice (*c*).

Illegal employment.

589. Subject to any exception which may be allowed by the court under their statutory powers, if any person is engaged or employed in contravention of the statutory provisions either before, during, or after an election, the person engaging or employing him is guilty of illegal employment, and the person so engaged or employed is also guilty of illegal employment, if he knew that he was engaged or employed contrary to law (*d*).

A speaker must not, therefore, for the purpose of promoting or procuring the election of a candidate at an election, be engaged or employed to speak in consideration of a payment or promise of payment, nor must a canvasser be engaged to canvass for such purpose and on such terms. But a person who is lawfully engaged or employed for payment for some lawful purpose is not deprived of the ordinary right of a citizen to canvass, and he may therefore canvass so long as it is not for his canvassing that he is paid (*e*).

(v.) *Illegal Hiring.*

Hiring conveyances.

590. It is an illegal hiring, and if the candidate or his election agent, be personally guilty an illegal practice, if any person lets, lends, or employs for the purpose of the conveyance of electors to or from the poll, and knowing that it is intended to be used for such purpose, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage horse or other animal which he keeps or uses for the purpose of letting out for hire (*f*), or if any person hires, borrows, or uses for the purpose of the conveyance of electors to or from the poll, any carriage horse or other animal which he knows the owner thereof is prohibited by this provision to let, lend, or employ for that purpose (*g*). But nothing in this provision is to prevent a carriage horse or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of being conveyed to or from the poll (*h*).

(*b*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 13.

(*c*) *Ibid.*, s. 21 (2).

(*d*) *Ibid.*, s. 17 (2).

(*e*) *Lichfield Division Case* (1895), 5 O'M. & H. 27, 28, 29. Compare *Elgin and Nairn Case* (1895), 5 O'M. & H. 1, 13.

(*f*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 14 (1).

(*g*) *Ibid.*, s. 14 (2). Where a voter is driven to the poll in a cab paying nothing to the driver, but there is no proof that the voter knows the use of the cab to be prohibited by law, no breach of this section is committed, and the voter's vote is good (*Buckrose Division Case* (1886), 4 O'M. & H. 110, 117). An illegal hiring is not an illegal practice unless committed by the candidate or his election agent. Therefore when it was objected that the petition said that during the election the respondent was by his agent guilty of illegal practices by hiring for the purpose of the conveyance of electors to and from the poll at the said election carriages and horses knowing that the owners thereof were prohibited by this section from lending the same for that purpose, there being no allegation in the particulars that the acts complained of had been done by the candidate or his election agent, the court held that this was a good objection, and refused to amend the petition so that s. 7 might apply (*Manchester Eastern Division Case* (1892), 4 O'M. & H. 120).

(*h*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 14 (3).

SECT. 1. Parliamentary.

No person is liable to pay any duty or to take out a licence for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election (*i*).

Committee-rooms.

591. It is an illegal hiring, and if the candidate or his election agent be personally guilty (*k*) an illegal practice, if any person for the purpose of promoting or procuring the election of a candidate at an election hires or uses any of the following descriptions of premises for a committee-room (*l*) :—

(a) Any premises on which the sale by wholesale or retail of any intoxicating liquor is authorised by a licence, whether the licence be for consumption on or off the premises.

(b) Any premises where any intoxicating liquor is sold or is supplied to members of a club, society, or association other than a permanent political club.

(c) Any premises whereon refreshment of any kind, whether food or drink, is ordinarily sold for consumption on the premises.

As to licensed premises there is, however, an exception in the case of any part of such premises ordinarily let for the purpose of chambers or offices, or the holding of public meetings or arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied (*m*).

(d) The premises of any public elementary school in receipt of an annual parliamentary grant, or any part of such premises (*n*). In this last category a schoolmaster's house is included where such house is within the curtilage of the school (*o*). But where the master's house is provided rent free by a subscriber to the schools, the house is not part of the premises of a public elementary school, although the managers be in receipt of an annual parliamentary grant (*p*).

Wherever *de facto* certain persons who act as a committee during the polling day meet together in a room, whether it be a room within (a), (b), (c), or (d), the members of the committee who so use that committee-room must be taken to be within the provision (*q*).

Saving for innocent creditors.

None of the above provisions prohibiting certain payments and contracts for payments, and the payment of certain sums and the incurring of certain expenses in excess of a certain maximum, affect the right of any creditor who, when the contract was made, was ignorant of the same being in contravention of the Act (*r*).

(*i*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 14 (4).

(*k*) *Ibid.*, s. 21 (2).

(*l*) *Ibid.*, s. 20. See note (*y*), p. 294, *ante*, as to what is included in the expression "committee-room."

(*m*) *Buckrose Division Case* (1886), 4 O'M. & H. 110, 115.

(*n*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 20. See, for instances of committee-rooms within this proviso, *Devonport Case* (1886), 2 T. L. R. 345, 346 ; *Cockermouth Division Case* (1901), 5 O'M. & H. 155.

(*o*) Corrupt and Illegal Practices Prevention Act, 1883 (45 & 46 Vict. c. 51), s. 20.

(*p*) *Buckrose Division Case, supra*, at p. 113. But it might be otherwise where such house is obviously apart from and distinct from the school-house itself, not only with respect to structure, but with respect to the mode in which the expenditure of keeping it up is defrayed (*ibid.*, at p. 115). See Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 6.

(*q*) *Buckrose Division Case, supra.*

(*r*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 19.

SUB-SECT. 10.—*The Poll.*

(i.) *In General.*

When poll is necessary.

592. A contested election—*i.e.*, an election in which more candidates are nominated than there are vacancies to be filled up—must be decided by a poll of the electors (*a*).

Notice of poll.

If the election is contested, the returning officer must, as soon as possible after adjourning the election (*b*), give public notice of the day on which the poll will be taken, and of the candidates described as in their respective nomination papers, and of the names of the persons who subscribe the nomination paper of each candidate, and of the order in which the names of the candidates will be printed in the ballot paper, and in the case of an election for a county must deliver to the postmaster of the principal post-office of the town in which is situate the place of election a paper, signed by himself, containing the names of the candidates nominated and stating the day on which the poll is to be taken; and the postmaster must forward the information contained in such paper by telegraph, free of charge, to the several postal telegraph offices situate in the county (*c*) for which the election is to be held, and such information must be published forthwith at each such office in the manner in which post-office notices are usually published (*d*).

Notice of disqualification.

593. If a candidate who does not withdraw is for any reason disqualified to be a candidate (*e*), and the other candidate desires that all votes given for the candidate so disqualified should be treated as having been thrown away—*i.e.*, treated as null and void as though they had never been given (*f*)—a notice of the disqualification must be published to the electors (*g*).

(*a*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 1.

(*b*) The election is necessarily adjourned when at the expiration of the prescribed time more candidates stand nominated than there are vacancies to be filled (Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 1). See p. 275, *ante*.

(*c*) The word "county" is not defined in the Act, but presumably every post-office in the division would suffice if the election were being held for a division of a county.

(*d*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 9. The notice must also contain the notification as to claims against returning officers prescribed by the Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), s. 7, Sched. II. Where the returning officer is required or authorised by the Act to give any public notice, he must carry such requirement into effect by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors (*ibid.*, r. 46).

(*e*) "Disqualified from being a candidate" is not the same thing as "disqualified from being returned as the successful candidate." Thus bribery by a candidate at an election, though it renders his election void if he be found guilty on petition, does not incapacitate the candidate at that election in the sense that the votes given for him by voters with knowledge of it will be thrown away (*Drinkwater* v. *Deakin* (1874), L. R. 9 C. P. 626). For disqualifications from being a candidate generally, see title PARLIAMENT.

(*f*) As in the *Wakefield Case* (1842), Bar. & Aust. 270, 319, decided by a parliamentary committee, and other cases cited in the following notes.

(*g*) *R.* v. *Eridge* (1813), 1 M. & S. 76. But compare *Hawkins* v. *R.* (1813), 2 Dow, 124, H. L. Lord ELDON, L.C., there said, at p. 147: "The utmost that those who had polled without notice could say would be, 'Place us in the same situation in which we would have been if notice had been given at the beginning of the

SECT. 1. Parliamentary.

In the absence of such a notice, a new election ought to be had unless either (1) the persons whose votes it is sought to treat as having been thrown away can be shown in fact to have been aware of the disqualification (*h*), or (2) the disqualification is of a sort whereof notice is to be presumed (*i*).

election.'" But this case was long before the Ballot Act, 1872 (35 & 36 Vict. c. 33), and when the electorate was very small. If the notice is defamatory, an action will lie upon it at common law (*Bendish* v. *Lindsey* (1798), 11 Mod. Rep. 194); and it will not be privileged (see privilege discussed in connection with elections, *Dickeson* v. *Hilliard* (1874), L. R. 9 Exch. 79; *Duncombe* v. *Daniell* (1837), 8 C. & P. 222), at least if a personal attack be made (*Wilson* v. *Reed* (1860), 2 F. & F. 149). The notice may be given to the voters, published in the newspapers, and circulated through the constituency (*Tipperary Case* (1875), 3 O'M. & H. 19, 20). In that case the candidate had been convicted of high treason. It is not essential that the notice should be given to each individual elector. See the following cases decided by parliamentary committees: *Drogheda 2nd Case* (1835), Kn. & Omb. 211; *Cork Case* (1835), Kn. & Omb. 274, 291; *Galway Case* (1838), Falc. & Fitz. 579; *Wakefield Case* (1842), Bar. & Aust. 270, 318. A form of notice will be found in the case lastly above mentioned at pp. 272, 273. It may be signed by any electors (*Newcastle-under-Lyme 2nd Case* (1842), Bar. & Aust. 564), or by the election agent, as in the *Galway Case* (1872), 2 O'M. & H. 46, 47.

In the *Tavistock Borough Case* (1853), 2 Pow. R. & D. 5, printed notices of a candidate's want of qualification were affixed on each side of the door of the Guildhall, in which the polling was carried on, some time before the poll commenced, so as to be visible to every elector as he came up to vote, and continued so affixed up to the close of the poll. But, in view of the cases above cited, it would appear not to be necessary to go thus far.

(*h*) *Drinkwater* v. *Deakin* (1874), L. R. 9 C. P. 626. Compare *Belfast Case* (1838), Falc. & Fitz. 595, 601, where a parliamentary committee allowed the question to be asked, "To your knowledge was what took place on the day of nomination with respect to Mr. Gibson's qualification publicly talked of in the town during the progress of the election?"

(*i*) *Gosling* v. *Veley* (1847), 7 Q. B. 406, reversed, but not on this point, in 1853 (4 H. L. Cas. 679). For instance, as the court in that case said, "if an elector were to nominate and vote for a woman, his vote would be thrown away. Then the fact would be notorious, and every man would be presumed to know the law upon that fact." Following this case, votes which actually were given for a woman who purported to stand as a candidate in a municipal election were held to have been *ipso facto* thrown away (*Beresford-Hope* v. *Sandhurst* (*Lady*) (1889), 23 Q. B. D. 79, C. A.). But the mere circumstance that the existence in fact of a disqualification happens to be notorious is not necessarily enough to excuse the necessity of a notice (*R.* v. *Bester* (1861), 3 L. T. 667). This is quite a different matter from a disqualification in its essence notorious, such as that cited above, which is conclusive. In another case, however, a notorious fact was held sufficient, and MATHEW, J., observed: "The test may be whether there is a reasonable difficulty as to the facts or as to the law" (*Cox* v. *Ambrose* (1890), 7 T. L. R. 59, 60). So in a case of the election of children to Christ's Hospital MALINS, V.-C., said: "The candidate in a certain case was disqualified on a point of law which the electors might not have been supposed capable of appreciating, and therefore their votes were held not to have been thrown away" (*Etherington* v. *Wilson* (1875), L. R. 20 Eq. 606, 618. The actual decision in this case was reversed on appeal (1876), 1 Ch. D. 160). The allusion is to *R.* v. *Tewkesbury Corporation* (1868), L. R. 3 Q. B. 629. But the latter case was doubted by BRETT, J., in *Drinkwater* v. *Deakin*, *supra*, at p. 643.

In another case, where votes had been given for an infant in an election to fill the post of clerk of a Court of Requests, votes so given were held to have been thrown away (*Claridge* v. *Evelyn* (1821), 5 B. & Ald. 81). This case falls within the principle of *Gosling* v. *Veley*, *supra*.

The practice of the parliamentary committees is thus stated: "By the common law the principle seems to be firmly established that where a candidate is in point of fact disqualified at the time of an election all votes given for him with knowledge of the fact upon which such disqualification is founded must be considered

Death of a candidate.

594. If after the adjournment of the election by the returning officer for the purpose of taking a poll one of the candidates nominated dies before the poll has commenced, the returning officer must, upon being satisfied of the fact of such death, countermand notice of the poll (*a*). This will be enforced, if necessary, by mandamus (*b*).

All proceedings with reference to the election must in such case be commenced afresh in all respects as if the writ had been received by the returning officer on the day on which notice was given him of such death. No fresh nomination is necessary in the case of a candidate who stood nominated at the time of the countermand of the poll (*c*).

Day of poll.

595. The poll is to take place on such day as the returning officer may appoint, not being in the case of a county or a district borough less than two nor more than six clear days and not being in the case of a borough other than a district borough more than three clear days after the day fixed for the election (*d*).

Interruption by riot etc.

596. Where the taking the poll is interrupted or obstructed by any riot or open violence, the returning officer or his lawful deputy is not for such cause to finally close the poll, but must adjourn the taking the poll at the particular polling place or places at which such interruption or obstruction has happened until the following day, and, if necessary, must further adjourn such poll until such interruption or obstruction has ceased, when he must again proceed with the taking the poll at such place or places; and any day whereon the poll has been so adjourned is not as to such place or places to be reckoned the day of polling at such election; and whenever the poll has been so adjourned by any deputy of the returning officer, such deputy must forthwith give notice to the returning

as thrown away. This knowledge may be established either by distinct notice or by notoriety, and it will in all cases be inferred that where the voter is aware of the facts he is aware of the legal deduction from those facts, however intricate and doubtful such deduction may be" (*Clitheroe Borough 2nd Case* (1853), 2 Pow. R. & D. 276, 285). Note that by the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 26, "until rules of court have been made in pursuance of this Act, and so far as such rules do not extend, the principles, practice, and rules on which committees of the House of Commons have heretofore acted in dealing with election petitions shall be observed as far as may be by the court and judge in the case of election petitions under this Act."

(*a*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 1. But if the returning officer does not hear of the death until after the commencement of the poll, it is too late to countermand the notice and the election must proceed (*Urquhart* (*Lord Provost of Dundee*) v. *Air*, [1910] S. C. 54).

(*b*) *R.* v. *Stewart*, [1898] 1 Q. B. 552.

(*c*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 1.

(*d*) *Ibid.*, Sched. I., Part I., r. 14. Where through an honest mistake insufficient time was allowed, but the petitioner had acquiesced in the mistake, the election was not avoided *Clare* (*Eastern Division*) *Case* (1892), 4 O'M. & H. 162, 165).

In reckoning time for the purposes of the Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or a public thanksgiving, are to be excluded; and where anything is required by the Act to be done on any day which falls on any of the above-mentioned days, such thing may be done on the next day, unless it is one of the days excluded as above mentioned (Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 56).

SECT. 1. Parliamentary.

officer (*e*). The law as to the exclusion of Sunday, Good Friday, and Christmas Day and the adjournment in such cases to the following day is the same as in the case of the adjournment of the business of the nomination (*f*).

Polling districts and polling places.

597. The most precise provisions have been made by law in regard to "polling districts" and "polling places" (*g*); and the returning officer must pay strict attention to these provisions, although no election can be questioned by reason of any informality relative to "polling districts" and "polling places" (*h*).

598. Every constituency is divided into "polling districts," and in a county each "polling district" has its peculiar "polling place" assigned to it. Each "polling district," whether in a county or a borough, contains a number of "polling stations" furnished with a number of "compartments," in one of which compartments each individual elector is to mark his ballot paper (*i*).

Polling districts.

599. The "polling districts" are districts into which the constituency has been specially divided for the purpose of parliamentary elections by the proper authority appointed by law in that behalf (*k*). In the case of a county this authority is the county council, whose business it is to divide the county into districts and to alter such districts from time to time in such manner as may be necessary for the purpose of carrying the law in that behalf into effect (*l*). In the case of a borough the authority varies in different cases. In every municipal borough, and in every borough any part of which forms a municipal borough, the town council of such borough will be the authority; in other boroughs the justices of the peace acting for such borough will be the authority, or if there be no such justices then the justices acting for the division of the county in which such borough or the greater part thereof is situate; and in places where a parliamentary borough is constituted by the combination of two or more municipal boroughs, then the authority is the town council of that municipal borough in which the nomination takes place (*m*)

(*e*) Parliamentary Elections Act 1835 (5 & 6 Will. 4, c. 36), s. 8.

(*f*) See p. 277, *ante*.

(*g*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 47.

(*h*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 5; Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 47 (4).

(*i*) Such is the general result of the Ballot Act, 1872 (35 & 36 Vict. c. 33), and the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51). The elucidation of the exact meaning of the four expressions "polling district," "polling place," "polling station," and "compartment" will be important for many different purposes under the Acts cited.

(*k*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 34; Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 47.

(*l*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (xii.); and Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 47 (2).

(*m*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 34. The contingent powers of justices under this section do not appear to have been touched by Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (xii.), which does not refer to boroughs.

The expenses incurred by the authority of a county or borough in dividing their county or borough into "polling districts," and in the case of a county assigning "polling places" to such districts, and in altering any such districts or polling places, are to be defrayed in like manner as if they were expenses incurred by the registration officer in the execution of the enactments respecting the registration of electors in such county or borough, and these enactments so far as is consistent with the tenor thereof are to apply accordingly (*n*). The division of a county into "polling districts" has for its object the provision of a convenient "polling place" for each elector; and the division of a borough has a similar object (*o*). A "polling place" (*p*) must be assigned to each district in a county in such manner that so far as is reasonably practicable every elector resident in the county may have his "polling place" within a distance not exceeding three miles from his residence, so nevertheless that a "polling district" need not in any case be constituted containing less than three hundred electors (*q*). In the case of a borough the district must be so divided that every elector resident in the borough may be enabled to poll within a distance not exceeding one mile from his residence, so nevertheless that a "polling district" need not be constituted containing less than three hundred electors (*r*).

Polling places.

The "polling places" referred to are the towns or villages where the poll is to be taken, and one of which in the case of a county is specially assigned as above stated to be the "polling place" in each "polling district." In the case of a borough there is no need to assign a "polling place" in this sense—the "polling place" in such case will be obvious (*s*).

Polling stations.

600. The "polling stations" are the actual structures—buildings, rooms, or booths, or part of such buildings, rooms, or booths, as the case may be (*t*)—in which the poll is taken. These are selected not by the aforesaid local authority, but by the returning

(*n*) Corrupt and Illegal Practices Prevention Acts, 1883 (46 & 47 Vict. c. 51), s. 47 (5). For the effect of the enactments referred to, see pp. 246 *et seq.*, *ante*.

(*o*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 47.

(*p*) For the meaning of this expression, see *infra*.

(*q*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 47 (1).

(*r*) *Ibid.*, s. 47 (3) (a). An exception was made in that section as to certain boroughs therein named, and special provisions made for those boroughs; but these are no longer boroughs at all (see Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), s. 2, and Sched. I., Part I.).

(*s*) See Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 47. In a county there will be rival towns or villages within one "polling district" desiring the privilege of being a "polling place"—a question which this provision enables the county council to decide. No such question can arise within one "polling district" in the case of a borough. Then the only question can be as to the exact position of the "polling stations," which is everywhere a matter for the returning officer under the Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 15, to be discussed in the next paragraph.

(*t*) A separate room or booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth (Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 17).

SECT. 1. Parliamentary.

officer. At every polling place (*a*) the returning officer is bound to provide a sufficient number of "polling stations" for the accommodation of the electors entitled to vote at such "polling place," and to distribute the "polling stations" among those electors in such manner as he thinks most convenient, provided that in a district borough there must be at least one polling station at each contributory place of such borough (*b*). Unless some building or place belonging to the county or borough is provided for that purpose, the returning officer must, whenever it is practicable so to do, instead of erecting a booth, hire a building or room for the purpose of taking the poll, so that the use of booths has become practically obsolete (*c*). The returning officer at a parliamentary election may use, free of charge, for the purpose of taking the poll at such election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate; but he must make good any damage done to such room, and defray any expense incurred by the person or body of persons having control over the same on account of its being so used for the purpose of taking the poll (*d*). The use of any room in an unoccupied house for the purpose of taking the poll does not render any person liable to be rated or to pay any rate for such house (*e*). No poll at any election for members of Parliament in England and Wales may be taken at any inn, hotel, tavern, publichouse or other premises licensed for the sale of beer, wine or spirits, or in any booth, hall, room, or other place directly communicating therewith, unless by consent of all the candidates expressed in writing (*f*). No election can be holden of any member for any city or borough in any church, chapel, or other place of public worship (*g*).

"Compartments."

601. The "compartments" are the particular spots in the "polling stations" where the voters are screened from observation in order that they may mark their ballot papers as hereinafter mentioned (*h*). Each "polling station" is to be furnished with such number of these compartments as the returning officer may think necessary, so that at least one compartment be provided for every one hundred and fifty electors entitled to vote at such "polling station" (*i*).

(*a*) At any polling place, that is to say, in the case of a county, at every polling place assigned by the county council as hereinbefore mentioned, and in the case of a borough election within any polling district of that borough.

(*b*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 15.

(*c*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 37.

(*d*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 6. The consent of the persons or corporation having control over the room need not be given, this section overriding the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 37, in this respect.

(*e*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 6.

(*f*) Parliamentary Elections Act, 1853 (16 & 17 Vict. c. 68), s. 6.

(*g*) Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 68.

(*h*) See p. 317, *post*.

(*i*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 16.

Ballot-boxes etc.

602. The returning officer is bound, for the purpose of carrying out regulations hereafter to be mentioned and subject to the prescribed conditions, to provide such ballot-boxes, ballot papers, stamping instruments, copies of register of voters, and other things, and to appoint and pay such officers, and do such other acts and things, as may be necessary for effectually conducting an election in the prescribed manner (*k*).

Voter must poll at proper station.

Exception for constables on duty.

603. Although a person whose name is on the register is entitled to vote, he cannot do so unless he be present in person at the proper polling station (*l*), except that a constable (*m*) who is, or is likely to be, on the day of any election sent or employed in discharge of his duty so as to prevent him voting at the polling booth or station at which he would otherwise be entitled by law to vote may at any time within seven days before the election apply to the chief constable (*n*) for a certificate, and the chief constable must thereupon give a certificate under his hand, stating the name of the constable, his number in the police force, his number and description on the register of voters, and the fact that he is so sent or employed (*o*). The presiding officer at any polling booth or station must, on production by such constable of the said certificate, allow him to vote at that booth or station, and must forthwith cancel the said certificate, and deal with the same in like manner (*p*) as the counterfoils of voting papers are directed by law to be dealt with (*q*). But no such constable is under this provision entitled to vote at any election at which he would not but for such provision be entitled to vote, nor more than once in any election, and if he so votes or attempts to vote he is subject to all the penalties imposed by law on a person personating or attempting to personate a voter at such election (*r*).

(*k*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 8. But no person must be appointed by the returning officer for the purpose of an election who has been employed by any other person in or about the election (*ibid.*, Sched. I., Part I., r. 49). As to the limits set to the returning officer's expenditure, see Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), and Parliamentary Elections (Returning Officers) Act, 1885 (48 & 49 Vict. c. 62).

(*l*) The court will not grant a *habeas corpus* for the purpose of enabling a party in the custody of the sheriff to go to a county of which he is a freeholder and vote at an election (*Ex parte Jones* (1835), 4 Nev. & M. (K. B.) 340). But a soldier confined to his barrack or quarters on the day of the election by an Act to regulate the stations of soldiers during parliamentary elections (Parliamentary Elections (Soldiers) Act, 1847 (10 & 11 Vict. c. 21) may nevertheless go out of his barrack or quarters to give his vote at the election. He must, however, return with all convenient speed as soon as his vote shall have been tendered (*ibid.*, s. 2).

(*m*) "Constable" includes any person belonging to the police force (Police Disabilities Removal Act, 1887 (50 Vict., sess. 2, c. 9), s. 2 (4) (a)).

(*n*) "Chief constable" includes an assistant chief constable, a commissioner or assistant commissioner of police, a head constable, and any other person for the time being in command of a police force or acting in that capacity (Police Disabilities Removal Act, 1887 (50 Vict., sess. 2, c. 9), s. 2 (4) (b)).

(*o*) Police Disabilities Removal Act, 1887 (50 Vict., sess. 2, c. 9), s. 2 (1).

(*p*) See p. 320, *post*.

(*q*) *Ibid.*, s. 2 (2).

(*r*) *Ibid.*, s. 2 (3).

SECT. 1. Parliamentary.

Returning officer's responsibility.

604. The returning officer has the conduct of the poll throughout (*s*). He is liable in damages to any person having a right to vote for malicious (*a*) denial of that right (*b*). He is also liable in damages, even where no malice can be proved, to any person who has a right to vote, for a denial of that right resulting from any breach of the ministerial, as distinguished from the judicial, duties cast upon such returning officer (*c*), and he is similarly liable, even where no malice is proved, to any candidate who fails to be returned owing to such breach of such ministerial duties (*d*).

The ballot.

605. The votes in the case of a poll at any election for the return of a member or members to serve in Parliament other than an election for a university or combination of universities (*e*) are given by ballot (*f*).

The ballot of each voter consists of a "ballot paper" showing the names and descriptions of the candidates. Each ballot paper must have a number printed on the back, and must have attached a counterfoil with the same number printed on the face (*g*).

The name of any candidate who has withdrawn from his candidature is to be omitted from the ballot paper; and if it is not so omitted, and a sufficient number of votes are given to the

(*s*) Ballot Act, 1872 (35 & 36 Vict. c. 33), *passim*. He may order a person causing a disturbance to be taken into custody and brought before a justice of the peace (*Spilsbury* v. *Micklethwaite* (1808), 1 Taunt. 146).

(*a*) If the returning officer is acting judicially, he will not be liable in damages for a mere mistake in law, but there must be malice (*Tozer* v. *Child* (1857), 7 E. & B. 377, 382, Ex. Ch.; *Cullen* v. *Morris* (1819), 2 Stark. 587. Compare the observations of WILSON, J., in *Drewe* v. *Coulton* (1787), cited in the note to *Harman* v. *Tappenden* (1801), 1 East, 563: "I do not mean to say that in this kind of action it is necessary to prove 'express malice'"). It is sufficient if malice may be implied from the conduct of the officer. See also *Milward* v. *Sergeant* (*circa* 1786), cited in the same note. Where the returning officer made a *bonâ fide* mistake, the court in Ireland refused to make him liable for the costs of an election petition (*Re Athlone* (*Borough*) *Election Petition* (1874), 8 I. R. C. L. 240).

(*b*) *Ashby* v. *White* (1703), 2 Ld. Raym. 938; 3 Ld. Raym. 323; 1 Smith, L. C., 11th ed., 240. The House of Lords reversed the decision of the Court of Queen's Bench, and approved the dissentient judgment of HOLT, C.J., therein. In Howell's State Trials nearly two hundred pages are given up to the "Proceedings in the House of Commons, House of Peers, and in the Queen's Bench in the Great Case of Ashby and White" (Vol. XIV., pp. 695 *et seq.*).

Where a plaintiff is not rightly entitled to vote, he may nevertheless under the statute law have the power to compel the returning officer to accept his vote, but he cannot have the right so to compel him (*Pryce* v. *Belcher* (1847), 4 C. B. 866, 883). This case, decided on the law which prevailed before the passing of the Ballot Act, 1872 (35 & 36 Vict. c. 33), is still of authority for the proposition for which it is here cited.

(*c*) See note (*a*), *supra*, and cases there cited.

(*d*) *Pickering* v. *James* (1873), L. R. 8 C. P. 489. Where the candidate had a right under "An Act for further regulating elections of members etc.," stat. (1696) 7 & 8 Will. 3, c. 25, s. 6, to a copy of the poll, it was held that an action of debt lay against the returning officer for his failure to supply such copy upon due request made (*Smith* v. *Phelipps* (1718), 1 Bro. Parl. Cas. 69).

(*e*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 31. As to the method of voting in the case of a poll taken at a university or combination of universities, see p. 322, *post*.

(*f*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 2.

(*g*) *Ibid.*

candidate who has so withdrawn to have turned the election if given for another candidate, the election will be void (*h*).

Hours of poll.

606. At every election for any constituency, except for any university or universities (*i*), which returns any member to serve in Parliament (*k*), the poll, if any, commences at eight o'clock in the forenoon (*l*), and must be kept open till eight o'clock in the afternoon of the same day, and no longer (*m*). No ballot paper must be given out after eight o'clock in the afternoon of that day, but a voter who has had a ballot paper delivered to him before that hour is entitled to mark such ballot paper and to deposit it in the ballot-box before the ballot-box is closed and sealed (*n*).

Void ballot papers.

607. Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything except the said number on the back is written or marked by which the voter can be identified, is void (*o*). But a ballot paper which conforms to the requirements of the law in other respects is not void because it fails to bear such official mark on its face (*p*).

Who entitled to receive voting paper.

608. At an election for a county or borough no person is entitled to vote unless his name is on the register of voters for the time being in force for such county or borough (*q*). When a man is entitled by law to the franchise, all reasonable intendments will be made in his favour if the register be ambiguous, but if it is not ambiguous the register is conclusive (*r*).

(*h*) *Wilson* v. *Ingham* (1895), 64 L. J. (Q. B.) 775.

(*i*) As to hours of voting in the case of universities, see pp. 325, 326, *post*.

(*k*) Where a borough is divided for the purpose of such return this includes an election for such divisions (Elections (Hours of Poll) Act, 1885 (48 Vict. c. 10), s. 2).

(*l*) But in the *Drogheda Case* (1874), 2 O'M. & H. 201, 202, the Irish court being satisfied that the polling stations were not substantially open till a quarter to nine, but that this fact had not the remotest effect on the election, refused to hold the election void, but intimated that the closing of the booth an hour or two before the proper time would be a very different thing. See *Gribbin* v. *Kirker* (1873), 7 I. R. C. L. 30. The court is especially averse to hold the election void for such a cause when the voters are in fault themselves (*Warrington Case* (1869), 1 O'M. & H. 42, 44 ; compare the *Worcester Case* (1880), 3 O'M. & H. 184, 189, where the polling was suspended owing to a rush of voters and a disturbance). Where nearly five thousand people were unable to vote in consequence of the disturbance, the election was held void. See the *Hackney Case* (1874), 2 O'M. & H. 77, 79, which case was discussed by the Irish court in the *Clare Eastern Division Case* (1892), 4 O'M. & H. 162.

(*m*) Elections (Hours of Poll) Act, 1885 (48 Vict. c. 10), s. 1.

(*n*) *Islington Division Case* (1901), 5 O'M. & H. 120.

(*o*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 2. As to the effect of this section on the counting, see p. 327, *post*.

(*p*) *Re Thornbury Division of Gloucestershire Election Petition, Ackers* v. *Howard* (1886), 16 Q. B. D. 739.

(*q*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 7. A person whose name is wrongly given on the register may vote in the name so wrongly given if he is the person intended (*R.* v. *Thwaites* (1853), 1 E. & B. 704).

(*r*) *Finsbury (Central) Case* (1892), 4 O'M. & H. 171, *per* CAVE, J., at p. 176. There the facts were as follows: John Wakefield was on the register in respect of a dwelling-house, No. 43, Wynyatt Street, and John Wakeley in respect of a dwelling-house, No. 14, Spencer Street. Both these persons appeared to have voted. It was shown that John Wakefield and his son (who had the same name as his

SECT. 1. Parliamentary.

Every person whose name is on such register is entitled to demand and receive a ballot paper and to vote (*a*), but nothing entitles any person to vote who is prohibited from voting by any statute or by the common law of Parliament, or relieves any such person from any penalties to which he may be liable for voting (*b*). The register is to be regarded for this purpose as a register of qualifications, and is conclusive that the people who are on it have the qualification which entitles them to be there (*c*). Non-residence therefore brought about by a person's own act in removing himself from the qualifying premises after registration will not prevent that person from having a right to receive a ballot paper and to vote (*d*). But if, although he has the qualifications which entitle him to be on the register, the person in question is under a personal disqualification—as, for instance, a peer, who cannot vote for a member of the House of Commons, or a female, or infant, or lunatic, or alien, or felon, or person convicted of certain statutory disqualifying offences (*e*)—then he is not entitled to vote even if his name be on the register (*f*).

Although the register is conclusive that a person whose name is on it has the qualification therein stated, yet nevertheless if the

father) jointly occupied No. 43, Wynyatt Street, as a residence, and also used a shed at No. 14, Spencer Street, as a place of business. There was no such person as John Wakeley in the occupation of either of the premises. The rent-book showed that the entries were all in the name of the father, and that the rent of the house was 19*s.* and that of the shed 2*s.* per week. The court allowed the vote of the father, but disallowed the vote of the son. CAVE, J., said: "No doubt when a man is entitled to vote all reasonable intendments should be made in his favour. But the difficulty here arises from the way in which the entry is made on the register. It is admittedly wrong. The Spencer Street place ought not to be described as a dwelling-house. I should not, however, be inclined to regard this misdescription as fatal; but I think that what the overseers intended to do was to put the father, John Wakefield, on the register in respect of both the premises. If they had intended to put the son on for Spencer Street, they would have added the word 'junior' to his name. Both the father and the son were qualified to vote; but I hold that only the father was on the register."

(*a*) A resolution of the House of Commons cannot deprive a person of a right of voting conferred by statute (*Bulmer* v. *Norris* (1860), 9 C. B. (N. S.) 19, 31).

(*b*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 7. Subject to the proviso, the register is, in the sense here explained, conclusive and binding both upon the returning officer and his representatives and upon the court (*Stowe* v. *Jolliffe* (1874), L. R. 9 C. P. 734).

(*c*) *Pembroke Boroughs Case* (1901), 5 O'M. & H. 135, *per* DARLING, J., at p. 137. In that case, although it had been decided within the previous few months in *James* v. *Ivemey*, [1901] 1 K. B. 193, that the freeholders of the old borough of Haverfordwest, who had had as such a right to vote for that borough, had no right as freeholders to vote for the new borough of Pembroke and Haverfordwest, yet before the decision had been given their names had been included by the revising barrister in the register, and the court in the election petition held the register for this purpose conclusive.

(*d*) See *Londonderry City Case* (1886), 4 O'M. & H. 96; and compare *Stowe* v. *Jolliffe*, *supra*. It would appear that since the Ballot Act, 1872 (35 & 36 Vict. c. 33), the law laid down at Nisi Prius by PATTESON, J., in *R.* v. *Bowler* (1842), Car. & M. 559, and in *R.* v. *Ellis* (1842), Car. & M. 564, is no longer applicable.

(*e*) As to all these personal disqualifications and the authorities upon which they rest, see pp. 139—145, *ante*. A peer is not entitled to vote at a university election (*Bristol (Marquis)* v. *Beck* (1907), 96 L. T. 55).

(*f*) *Stowe* v. *Jolliffe*, *supra*.

register show the same name in two divisions of the same borough, and there is no asterisk against such name in either place, and if the person so registered votes in both divisions, one of such votes will be struck off on a scrutiny and the other retained. If the voter knows at which place he voted first the vote given at that place will be retained; otherwise the vote to be retained is that relating to his actual place of abode (*g*). The presiding officer must, however, allow both such votes (*h*).

Conduct of polling stations.

609. No person, except a constable who fulfils certain conditions (*i*), is to be admitted to vote at any polling station except the one allotted to him (*k*). The returning officer must give public notice of the situation of polling stations and the description of voters entitled to vote at each station and of the mode in which electors are to vote (*l*).

The returning officer must provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He must keep the official mark secret, and an interval of not less than seven years must intervene between the use of the same official mark at elections for the same county or borough (*m*).

Directions to voters.

Outside every polling station and in every compartment of every polling station there must be placarded certain "Directions for the Guidance of the Voter in Voting" in the prescribed form and printed in conspicuous characters (*n*).

Presiding officer.

610. The returning officer must appoint a presiding officer to preside at each station, and the officer so appointed must keep order at his station, must regulate the number of electors to be admitted

(*g*) *Stepney Case* (1886), 4 O'M. & H. 34, 43; *Finsbury (Central) Case* (1892), 4 O'M & H. 171, 174.

(*h*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 7.

(*i*) See p. 310, *ante*.

(*k*) *Ibid.*, Sched. I., Part I., r. 18.

(*l*) *Ibid.*, r. 19. This he must do by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors (*ibid.*, r. 46).

(*m*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 20.

(*n*) *Ibid.*, Sched. II. These directions specify the number of candidates for whom the voter may vote. They state that the voter will go into one of the compartments and with the pencil provided in the compartment place a cross on the right-hand side opposite the name of each candidate for whom he votes, thus ×; that the voter will then fold up the ballot paper so as to show the official mark on the back, and, leaving the compartment, will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot-box, and forthwith quit the polling station; that if the voter inadvertently spoils a ballot paper he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper; that if the voter votes for more than the stated number of candidates, or places any mark on the paper by which he may afterwards be identified, his ballot paper will be void, and will not be counted; and that if the voter takes a ballot paper out of the polling station, or deposits in the ballot-box any other paper than the one given him by the officer, he will be guilty of a misdemeanour, and be subject to imprisonment for any term not exceeding six months, with or without hard labour. The directions are to be illustrated by

SECT. 1. Parliamentary.

at a time, and must exclude all other persons except the clerks, the agents of the candidates, and the constables on duty (*o*), and the candidates themselves (*p*).

Clerks.

The returning officer may appoint as many clerks as may be necessary for effectually conducting the election in the prescribed manner (*q*). These clerks assist the presiding officer, but are the servants of the returning officer (*r*).

Compartments.

The compartments must be so constructed and arranged that the voters can mark their votes therein screened from observation (*s*).

The ballot paper.

611. Every ballot paper must contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames and, if there are two or more candidates with the same surname, of their other names. It must be in the prescribed form or as near thereto as circumstances admit, and must be capable of being folded up (*t*).

The ballot-box.

612. Every ballot-box must be so constructed that the ballot papers can be placed therein, but cannot be withdrawn therefrom without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, must show the ballot-box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and must then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and must place it in his view for the receipt of ballot papers, and must keep it so locked and sealed (*u*).

Official mark.

613. Immediately before a ballot paper is delivered to an elector it must be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register must be called out, and the number of such elector must be marked on the counterfoil, and a mark must be placed in the register against the number of

examples of the ballot paper. But the ballot paper will not be rejected for mere breach of these directions if it substantially complies with the rules that there must not be want of official mark, nor voting for more candidates than the voter is entitled to, nor writing or mark by which the voter could be identified, nor voting papers unmarked or void for uncertainty (*Woodward* v. *Sarsons* (1875), L. R. 10 C. P. 733, 748).

(*o*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 21. It appears that no writing or other special form of appointment is necessary (*R.* v. *Garvey* (1887), 16 Cox, C. C. 252, C. C. R. (Ir.)). The returning officer may himself, if he thinks fit, preside at any polling station, and the provisions of the Act relating to a presiding officer will apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer (Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 47).

(*p*) *Clementson* v. *Mason* (1875), L. R. 10 C. P. 209. As to the appointment of personation agents, see p. 321, *post*.

(*q*) These are included in the "officers" named (Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 8. See p. 311, *ante*.

(*r*) *Pickering* v. *James* (1873), L. R. 8 C. P. 489.

(*s*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 16.

(*t*) *Ibid.*, Sched. I., Part I., r. 22.

(*u*) *Ibid.*, r. 23.

the elector to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received (*x*).

Voting.

614. The elector, on receiving the ballot paper, must forthwith proceed into one of the compartments in the polling station and there mark his paper and fold it up so as to conceal his vote, and must then put his ballot paper, so folded up, into the ballot-box. He must vote without undue delay, and must quit the polling station as soon as he has put his ballot paper into the ballot-box (*a*).

Incapable voters.

615. The presiding officer on the application of any voter who is incapacitated by blindness or other physical cause from voting in the prescribed manner, or, if the poll be taken on Saturday, of any voter who declares that he is of the Jewish persuasion and objects on religious grounds to vote in the prescribed manner, or of any voter who makes a declaration that he is unable to read, must, in the presence of the agents of the candidates (*b*), cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot-box; and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule and the reason why it is so marked must be entered on a list which is called "The List of Votes marked by the Presiding Officer" (*c*). The declaration of inability to read is to be made by the voter at the time of polling before the presiding officer, who must attest it in the prescribed form, and no fee, stamp, or other payment is to be charged in respect of such declaration, and the said declaration is to be given to the presiding officer at the time of voting (*d*).

Tendered ballot papers.

616. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant is, upon duly answering the questions and taking the oath permitted by law (*e*) to be asked of and to be administered to voters at the time of polling, entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper, called a "Tendered Ballot

(*x*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 24. The question is whether there is evidence of an intention to make the official mark, and of a recognisable official mark, on the back of the ballot paper (*Cirencester Case* (1893), Day, 52, 155). A ballot paper which corresponds in other respects with the requirements of the Act is not void for want of the official mark on its face (*Re Thornbury Division of Gloucestershire Election Petition, Ackers* v. *Howard* (1886), 16 Q. B. D. 739). *Aliter* if the official mark is absent from the back of the ballot paper (Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 2).

(*a*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 25.

(*b*) Where in the Act any expressions are used requiring, or authorising, or inferring that any act or thing is to be done in the presence of the agents, such expressions are to be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place at which such act or thing is being done, so the non-attendance of any agents or agent at such time and place, if such act or thing be otherwise duly done, does not in any way vitiate the act or thing done (Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part. I., r. 55).

(*c*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 26.

(*d*) *Ibid.*

(*e*) See p. 319, *post.*

SECT. 1. Parliamentary.

Paper," must be of a colour differing from the other ballot papers, and, instead of being put into the ballot-box, is to be given to the presiding officer, and indorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and is not to be counted by the returning officer (*f*); and the name of the voter and his number on the register is to be entered on a list called " The Tendered Votes List " (*g*).

Secrecy of ballot.

617. The ballot is secret. Every officer, clerk, and agent in attendance at a polling station must maintain, and aid in maintaining, the secrecy of the voting in such station, and must not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station or as to the official mark (*h*).

Declaration of secrecy.

Every returning officer and every officer, clerk, or agent authorised to attend at a polling station must before the opening of the poll make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer. But no such returning officer, officer, clerk, or agent is, save as aforesaid, to be required as such to make any declaration or take any oath on the occasion of any election (*i*). The candidates are not required to make any declaration of secrecy (*k*).

Interference with voters.

No one must interfere with or attempt to interfere with a voter when marking a vote, or otherwise obtain or attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station (*l*).

Information is not " communicated " within this provision unless

(*f*) When a tendered vote was included in the total by mistake as though it were an ordinary vote, but on a scrutiny the tendered vote was shown to be a good one, but the vote of another person who had voted was shown to be bad, the former was retained and the latter struck off (*Oldham Case* (1869), 1 O'M. & H. 151).

(*g*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 27. Where it was proved by a voter that he had been personated, and that he went to the poll and claimed to vote, and the presiding officer gave him a tendered ballot paper, but omitted to indorse the applicant's name on it, it was held that although the presiding officer had not complied with the directions of the rule, yet upon a scrutiny the vote ought to be counted (*Stepney Case* (1886), 4 O'M. & H. 34, 43). *Aliter* when the voter, after answering the usual questions and taking the oath, received from the presiding officer a tendered ballot paper, but, instead of returning it to the presiding officer, by his own fault put it into the ballot-box (*Buckrose Division Case* (1886), 4 O'M. & H. 110, 115).

(*h*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 4. As to the criminal law and the punishment to which the offender will be subject, see p. 534, *post*.

(*i*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 54.

(*k*) *Clementson* v. *Mason* (1875), L. R. 10 C. P. 209.

(*l*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 4.

it actually reaches the mind of the person to whom the communication is said to be made (*m*).

No person who has voted at an election can, in any legal proceeding to question the election or return, be required to state for whom he has voted (*n*).

Questions to voters.

618. No inquiry is permitted at the time of polling as to the right of any person to vote, except that the returning officer or his deputy (*o*) must, if required on behalf of any candidate (*p*), put to any voter at the time of his tendering his vote, and not afterwards, the following questions or either of them: (1) "Are you the same person (*q*) whose name appears as A. B. on the register of voters for ?"; (2) "Have you already voted, either here or elsewhere, at this election for ?"

If any person wilfully makes a false answer to either of the questions he is to be deemed guilty of an indictable misdemeanour, and is to be punished accordingly.

The returning officer must, if required on behalf of any candidate at the time aforesaid, administer an oath to any voter in the following form: "I swear by Almighty God that I am the same person whose name appears as A. B. on the register of voters now in force for , and that I have not before voted, either here or elsewhere, at the present election for " (*r*).

It is not lawful to require any voter at any parliamentary election to take any oath or affirmation other than this, either in proof of his freehold or of his residence, age, or other qualification or right to vote; or to reject any vote tendered at such election by any person whose name is upon the register of voters in force for the time being, except by reason of its appearing to the returning officer or his deputy, upon putting such questions as aforesaid or either of them, that the person so claiming to vote is not the same person whose name appears upon such register, or that he had previously voted at the same election, or unless such person has refused to answer the said questions or either of them or to take the said oath or make the said affirmation; and no scrutiny is allowed by or before any returning officer with regard to any vote given or tendered at any such election (*s*).

Spoilt ballot papers.

619. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot

(*m*) *Stannanought* v. *Hazeldine* (1879), 4 C. P. D. 191, 196.

(*n*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 12.

(*o*) The presiding officer is the deputy of the returning officer for these purposes. Where the town clerk put the question in the presence of the returning officer, this was held to be a sufficient compliance with the section (*R.* v. *Spalding* (1842), Car. & M. 568).

(*p*) It need not be proved for this purpose that the agent had received any authority from the candidate (*R.* v. *Spalding* (1842), Car. & M. 568).

(*q*) This does not necessarily mean, "Is this your real name" (*per* CROMPTON, J., in *R.* v. *Thwaites* (1853), 1 E. & B. 704, 711).

(*r*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 81. See also Oaths Act, 1909 (9 Edw. 7, c. 39). Or the voter may affirm in accordance with the Oaths Act, 1888 (51 & 52 Vict. c. 46), s. 2.

(*s*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 82, which section is to prevail any law, statute, or usage to the contrary notwithstanding etc. As to university elections, see p. 325, *post*.

SECT. 1. Parliamentary.

paper may, on delivering to the presiding officer the ballot paper so spoilt and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up, and the spoilt ballot paper must be immediately cancelled (*t*).

Sealing up ballot-boxes etc.

620. As soon as possible after the close of the poll—that is to say, as soon as possible after the clock has struck eight, and the persons who have received ballot papers before the stroke have had time to fill them up and place them in the ballot-box (*u*)—the presiding officer of each station must, in the presence of the agents of the candidates (*v*), make up into separate packets, sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals—

(1) Each ballot-box in use at his station, unopened but with the key attached;

(2) The unused and spoilt ballot papers, placed together;

(3) The tendered ballot papers;

(4) The marked copies of the register of voters and the counterfoils of the ballot papers;

(5) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "Physical Incapacity," "Jews," and "Unable to read," and the declarations of inability to read; and must deliver such packets to the returning officer (*w*).

The packets must be accompanied by a statement made by the presiding officer showing the number of ballot papers intrusted to him, and accounting for them under the heads of ballot papers in the ballot-box, unused, spoilt, and tendered ballot papers, which statement is known as the "Ballot Paper Account" (*x*).

Custody of ballot-boxes etc.

After this the ballot-boxes, having been sealed up so as to prevent the introduction of additional ballot papers, must be delivered to and taken charge of by the returning officer (*y*), upon whom devolve

(*t*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 28.

(*u*) For the law on this subject, see p. 313, *ante*.

(*v*) The expression "in the presence of the agents of the candidates" is explained (see Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 55).

(*w*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 29. Where twenty ballot papers were marked by the presiding officer by the direction of voters who were unable to read, and each of these ballot papers was placed by the presiding officer in the ballot-box, wrapped up in the declaration of inability to read made by the voter, and the declarations of inability to read of the votes so marked by the presiding officer were not made up into a separate packet, sealed with the seal of the presiding officer, and so delivered to the returning officer, pursuant to rr. 26 and 29, but were delivered to him in the ballot-box with the ballot papers in such wise that these votes could have been, though they were not in fact, identified by the returning officer, it was held that, notwithstanding this breach of his duties by the presiding officer, the votes in question were properly counted (*Woodward* v. *Sarsons* (1875), L. R. 10 C. P. 733).

(*x*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 30.

(*y*) *Ibid.*, s. 2.

the duties of opening the same and ascertaining the result of the poll (*a*).

Personation agents.

621. In order to prevent personation (*b*) any candidate may, previous to the time fixed for taking the poll, nominate and appoint an agent or agents on his behalf to attend at each or any of the polling stations appointed for taking the poll at such election (*c*).

The candidate must give notice in writing to the returning officer or his respective deputy of the name and address of the person or persons so appointed by him to act as agents for such purpose, and thereupon it will be lawful for every such agent to attend during the time of polling at the polling station or polling stations for which he shall have been so appointed (*d*).

A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may attend (*e*).

If any person appointed an agent by a candidate for the purpose of attending at the polling station dies or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and must forthwith give to the returning officer notice in writing of the name and address of the agent so appointed (*f*). Mere misconduct on the part of a polling agent will not avoid the election (*g*).

Misconduct in polling station.

622. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed will not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day. Any person so removed, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace. But the powers conferred by this provision are not to be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station (*h*).

Authority of presiding officer.

623. For the purpose of the adjournment of the poll and of every other enactment relating to the poll, a presiding officer has the power by law belonging to a deputy returning officer; and any

(*a*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 30. See pp. 326 *et seq.*, *post*.

(*b*) See p. 292, *ante*.

(*c*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 85. The Act speaks of "booths," but polling stations are the modern equivalents (Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 15).

(*d*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 85.

(*e*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 51. See *Clementson* v. *Mason* (1875), L. R. 10 C. P. 209.

(*f*) *Ibid.*, r. 53.

(*g*) *Bolton Case* (1874), 2 O'M. & H. 138, 143.

(*h*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 9.

SECT. 1. Parliamentary.

presiding officer and any clerk appointed by the returning officer to attend at a polling station has the power of asking questions and administering the oath authorised by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorised to be taken before either of them respectively (*i*).

Non-compliance with rules.

624. No election is to be declared invalid by reason of a non-compliance with the prescribed rules, or of any mistake in the use of the prescribed forms, if it appears to the court having cognisance of the question that the election was conducted in accordance with the principles laid down in the body of the Ballot Act, 1872, and that such non-compliance or mistake did not affect the result of the election (*k*).

An election ought not to be held void by reason of transgressions of the law committed without any corrupt motive by the returning officer or his subordinates in the conduct of the election where the court is satisfied that the election was, notwithstanding those transgressions, an election really and in substance conducted under the existing election law, and that the result of the election, *i.e.* the success of one candidate over the other, was not and could not have been affected by those transgressions. If, on the other hand, the transgressions of the law by the officials being admitted, the court sees that the effect of the transgressions was such that the election was not really conducted under the existing election laws, or it is open to reasonable doubt whether those transgressions may not have affected the result, and it is uncertain whether the candidate who has been returned has really been elected by the majority of persons voting in accordance with the laws in force relating to elections, the court is then bound to declare the election void (*l*).

Thus, to render an election void under the Ballot Act, 1872 (*m*), by reason of a non-observance of or non-compliance with the rules or forms given therein, such non-observance or non-compliance must be so great as to satisfy the court before which the validity of the election is contested that the election has been conducted in a manner contrary to the principle of an election by ballot (*n*).

(ii.) *University Elections.*

Poll or show of hands.

625. In the case of the election of a member or members to serve in Parliament for a university or combination of universities

(*i*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 10.

(*k*) *Ibid.*, s. 13.

(*l*) *Islington Division Case* (1901), 5 O'M. & H. 120, 125, *per* KENNEDY, J. Cases of riot are to be decided on the same principle (*Dudley Case* (1874), 2 O'M. & H. 115, 121).

(*m*) 35 & 36 Vict. c. 33.

(*n*) *Woodward* v. *Sarsons* (1875), L. R. 10 C. P. 733. The court in that case pointed out that if the four requirements of the Ballot Act, 1872 (35 & 36 Vict. c. 33), pointed to by the four valid causes for rejecting votes stated in Sched. I. Part 1., r. 36 (see p. 327, *post*), were not substantially complied with, the vote was void, but that except as aforesaid—*i.e.*, as stated in the text—the election would not be thereby avoided. The tests for distinguishing good votes from bad are stated in detail at p. 327, *post*. The Irish case of *Re Pembroke Election Petition* (Nos. 1 and 2), [1908] 2 I. R. 433, is to the same effect.

the poll is not conducted by ballot, nor is it necessary that any of the foregoing regulations should be observed (*o*). In such an election, therefore, the common law mode of election prevails, that is, by show of hands or by poll (*p*).

The show of hands is now practically obsolete (*q*); and where a poll is demanded the election commences with that poll as being the regular mode of popular election, so that the show of hands is dispensed with altogether (*r*). Taking a poll is a waiver of any previous irregularity in demanding it (*s*).

Place of election.

626. The election must, according to the common law, be held at the most usual place (*a*). But in the case of the Universities of Oxford and Cambridge the vice-chancellor has statutory power to appoint any number of polling places, not exceeding three, and to direct at which of such polling places the members of convocation, and of the senate, according to their colleges, shall vote; and also to appoint any number of pro-vice-chancellors, any one of whom may receive the votes, and decide upon all questions during the absence of such vice-chancellor; and such vice-chancellor has power to appoint any number of poll clerks and other officers, by one or more of whom the votes are to be entered in such number of poll-books, as may be judged necessary by such vice-chancellor (*b*). Similarly, at every election of a member to serve in Parliament for the University of London, the vice-chancellor has statutory power to appoint the polling places (*c*).

Method of voting.

627. The method of voting is, according to the common law, in the discretion of the returning officer, but the election must be by voting in some method (*d*).

(*o*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 31. The only part of the Act which applies to university elections is that which deals with personation.

(*p*) An election by ballot was illegal at common law. *Faulkner* v. *Elger* (1825), 4 B. & C. 499. "The great objection to such a mode of election is that there can be no effectual scrutiny, because, if it be afterwards discovered that a given individual has voted who had no right to vote, it is impossible to say on which side he voted" (*per* BAYLEY, J., *ibid.*, at p. 455). If the procedure enacted by the Ballot Act, 1872 (35 & 36 Vict. c. 33), be adopted, this particular objection would appear to be avoided or reduced to a minimum.

(*q*) "The show of hands is only a rude and imperfect declaration of the sentiments of the electors" (*Anthony* v. *Seger* (1789), 1 Hag. Con. 9, *per* Sir W. SCOTT, at p. 13).

(*r*) "If the parties could afterwards recur to a show of hands there would be no certainty or regularity in elections" (*Anthony* v. *Seger*, *supra*).

(*s*) *Campbell* v. *Maund* (1836), 5 Ad. & El. 8, 65, Ex. Ch.; *R.* v. *Lambeth (Rector)* (1838), 8 Ad. & El. 356.

(*a*) 1 Bl. Com. (ed. 1844), 178.

(*b*) Parliamentary Elections Act, 1853 (16 & 17 Vict. c. 68), s. 5.

(*c*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 44.

(*d*) "If during the time of the old laws, *i.e.*, the laws still obtaining in university elections, with the consent of the whole constituency, a candidate had been selected by tossing up a coin or by the result of a horse-race, it should have been held that the electors had exercised their free will under a law of their own invention, and not under existing laws, which prescribed an election by voting" (*per* Lord COLERIDGE, C.J., and the Court of Common Pleas in *Woodward* v. *Sarsons* (1875), L. R. 10 C. P. 733, 741).

SECT. 1. Parliamentary.

As soon as the entry of the vote is perfected it is too late for the voter to change his mind (*e*), but he may correct himself before the entry of his vote is complete (*f*). If the clerk or other officer taking and recording the vote make a mistake, the mistake must be corrected when it is discovered (*g*)

Voting by proxy.

628. The elector at a university election may give his vote either personally or, if he fulfils the required conditions, by proxy (*h*).

Instead of attending to vote in person, he may nominate any other elector or electors of the same university, competent to make the declaration afterwards to be mentioned, to deliver for him at the poll a voting paper containing his vote. Every such voting paper must bear date subsequently to notice given by the returning officer of the day for proceeding to election, and must contain the name or names of the candidate or candidates thereby voted for, and the name or names of the elector or electors authorised on behalf of the voter to tender such voting paper at the poll, and must be according to the form or to the effect prescribed. Such filled-in voting paper must on any day subsequent to notice given by the returning officer of the day for proceeding to election be signed by the voter in the presence of a justice of the peace for the county or borough in which such voter shall be then residing, who must certify and attest the fact of such voting paper having been so signed in his presence by signing at the foot thereof a certificate or attestation in the form or to the effect prescribed, with his name and address in full, and must state his quality as a justice of the peace for such county or borough (*i*).

The voting paper so signed and certified may be delivered to the vice-chancellor of the university for which the election is held, or to any pro-vice-chancellor appointed by him, or in the case of the University of Dublin to the provost of Trinity College, or to any person lawfully deputed to act for him, at any one of the appointed polling places, during the appointed hours of polling, by any one of the persons therein nominated, who must, on tendering such voting paper at the poll, read it out; and the said vice-chancellor, pro-vice-chancellor, provost, or deputy must receive voting papers as they are delivered, and must cause the votes thereby given, or such of them as may not appear to be invalid, to be recorded as if such votes had been given by the electors attending in person; and all votes so recorded have the same validity and effect as if they had been duly given by the voters in person. No person is entitled to sign or vote by more than one voting paper at any election, and no voting papers containing names of more candidates than there are burgesses to be elected at such election can be received or recorded.

(*e*) So held by one of the parliamentary committees in the *Taunton Case* (1838), Falc. & Fitz. 295, 299.

(*f*) *Stirlingshire Case* (1838), Falc. & Fitz. 538, 542.

(*g*) *Reading Case* (1838), Falc. & Fitz. 546, 555.

(*h*) University Elections Act, 1861 (24 & 25 Vict. c. 53), *passim.*

(*i*) *Ibid.*, s. 1. All the provisions of this statute are applied to every election of a member for the University of London by the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 45, with the exception mentioned in note (*k*) on p. 325, *post.*

No voting paper can be received or recorded unless the person tendering it makes the following declaration, which he must sign at the foot or back thereof: "I solemnly declare that I verily believe that this is the paper by which A. B. [the voter] intends to vote pursuant to the provisions of the Universities Election Acts, 1861 and 1868." No voting paper may be so received and recorded if the voter signing it has already voted in person at the same election. Every elector is entitled to vote in person, notwithstanding that he has duly signed and transmitted a voting paper, if such voting paper has not been already tendered at the poll (*k*). Such a voting paper is not liable to any stamp duty (*l*).

Objections to voting papers.

629. It is lawful for any person authorised on behalf of any candidate at a university election to object to votes to inspect any voting paper tendered at the poll before the same is received or recorded, and to object to it on one or more of the following grounds: (1) that the person on whose behalf the voting paper is tendered is not qualified to vote; (2) that the person tendering the voting paper is not duly qualified in that behalf; (3) that the person in whose behalf the voting paper is tendered has already voted at that election in person or by voting paper; (4) that the voting paper bears date anterior to notice given by the returning officer of the day for proceeding to election; (5) that the voting paper is forged or falsified. The returning officer, his deputy or assessor, or any officer having power to decide objections in respect of votes tendered by voters attending the poll in person, has power to put questions to the person tendering such voting paper, and to reject, receive, and record, or receive and record as objected to or protested against, any votes tendered by voting papers. In case the objection offered to any voting paper is that it is forged or falsified, such returning or other officer must receive and record such voting paper, having previously written upon it "Objected to as forged" or "Objected to as falsified," together with the name of the person making such objection (*m*).

Time of election.

630. At any election for either of the Universities of Oxford or Cambridge the polling is not confined to one day, or to the hours to which it is confined in cases of elections for counties, cities, and boroughs; but the polling in such universities must not continue more than five days at the most, Sunday, Christmas Day, Good Friday, and Ascension Day being excluded from the computation (*n*). At an election for the university of London the polling commences at eight o'clock in the morning of the day next following the day fixed for the election, and it may continue for not more than five days,

(*k*) University Elections Act, 1861 (24 & 25 Vict. c. 53), s. 2; University Elections Act, 1868 (31 & 32 Vict. c. 65), s. 1. The words "in the manner heretofore used" in the University Elections Act, 1861 (24 & 25 Vict. c. 53), s. 2, do not apply to the University of London (University Elections Act, 1868 (31 & 32 Vict. c. 65), s. 2).

(*l*) *Ibid*, s. 6.

(*m*) University Elections Act, 1861 (24 & 25 Vict. c. 53), s. 3. See p. 331, *post*.

(*n*) Parliamentary Elections Act, 1853 (16 & 17 Vict. c. 68), s. 4; Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 31.

SECT. 1. Parliamentary.

the same four days being excluded, but no polling is to be kept open later than four o'clock in the afternoon (*o*).

SUB-SECT. 11.—*Counting the Votes.*

Who may be present at the counting.

631. The returning officer must make arrangements for counting the votes in the presence of the agents of the candidates—each candidate having the right respectively to appoint "counting agents" (*p*) for this purpose (*q*) as soon as possible after the close of the poll (*r*). He must give the "counting agents" notice in writing of the time and place at which he will begin to count the votes (*a*).

The candidate is himself entitled to be present at the counting of the votes (*b*), but no other person, except the returning officer and his assistants and clerks, may be present save with the sanction of the returning officer (*c*).

Opening the ballot-boxes.

632. Before the returning officer proceeds to count the votes he must, in the presence of the agents of the candidates, open each ballot-box, and taking out the papers therein, must count and record the number thereof, and must then mix together the whole of the ballot papers contained in the ballot-boxes. The returning officer, while counting and recording the number of ballot papers and counting the votes, must keep the ballot papers with their faces upwards, and must take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers (*d*).

The counting must be continuous.

633. The returning officer must, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment and excluding, except so far as he and the agents otherwise agree, the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer must place the ballot papers and other documents

(*o*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 43. As to the Scotch universities, see Universities Elections Amendment (Scotland) Act, 1881 (44 & 45 Vict. c. 40), s. 2 (1).

(*p*) The words of the rule are "Agents to attend the counting of the votes." They are usually described by the convenient abbreviation "counting agents." No number of counting agents is specified, and the number would therefore appear to be in the discretion of the returning officer. Some returning officers in practice discourage the attendance of any counting agents. The method of counting is also entirely in the discretion of the returning officer, and the attendance of "counting agents," though indubitably the right of the candidates, may therefore safely be dispensed with by the candidate's consent. If the mixing of the votes (as to which see *infra*) is skilfully carried out, the attendance of the counting agents will not enable them to gauge the strength of their party in the different districts of the constituency, and it is for this latter purpose rather than to check the accuracy of the counting that the privilege of appointing counting agents has been chiefly valued in practice.

(*q*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 31.

(*r*) *Ibid.*, r. 32.

(*a*) *Ibid.*

(*b*) *Clementson* v. *Mason* (1875), L. R. 10 C. P. 209.

(*c*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 33. The sanction of the returning officer is usually given to the presence of a limited number of the friends of the candidates.

(*d*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 34.

relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and must otherwise take proper precautions for the security of such papers and documents (*e*).

What votes must be rejected.

634. The returning officer must reject votes given upon ballot papers which fail to bear the official mark on their back (*f*), but must count votes given upon ballot papers which fail to bear the official mark on their face (*g*). He must reject every vote where the voter has purported to vote for more candidates than the number for which he is entitled to vote (*h*), and must reject every vote given upon a ballot paper containing any writing or mark by which a voter could be identified (*i*). He must, therefore, reject the vote where the voter has written the name of a candidate, because a man can be identified by his handwriting. But where he has put two crosses or a peculiar mark which is not a cross at all, the returning officer must not reject the vote unless there is evidence of an arrangement that the voter would place such two crosses or peculiar mark on the ballot paper, so as to indicate that it was he who had used that particular ballot paper; but upon such proof being made the ballot paper ought to be rejected (*k*). It is not a question whether by some accident or other a challenged mark might possibly lead to the identification of the voter, but whether as a matter of fact it can so lead (*l*).

He must reject every vote where the paper is unmarked (*m*), but the

(*e*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 35. In practice, where geographical distances permit the counting to be completed before midnight on the same night as the poll, the counting proceeds continuously without regard to the close time herein referred to.

(*f*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 2, and Sched. I., Part I., r. 36 (1); *Wigtown Case* (1874), 2 O'M. & H. 215, 216.

(*g*) *Re Thornbury Division of Gloucestershire Election Petition, Ackers* v. *Howard* (1886), 16 Q. B. D. 397.

(*h*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 36 (2); *Phillips* v. *Goff* (1886), 17 Q. B. D. 805, 813. Each cross should be for this purpose counted as a vote for the candidate opposite whose name it is put (*ibid.*).

(*i*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 36 (3).

(*k*) *Woodward* v. *Sarsons* (1875), L. R. 10 C. P. 733, 749.

(*l*) *Cirencester Case* (1893), Day, 155. Sir HENRY HAWKINS in that case said, at p. 159: "There were some marks and blotches of a very irregular character which might well be mistaken as indications of temporary unsteadiness in the voters, who by their unsteadiness imperilled their votes. In such cases we have done our best to discover whether, although obscured by the blots, blurs, and other marks, there existed possible indications on the part of the voter of an intention to vote without a thought of leaving a trace behind him to enable him to be identified. A mere unmeaning mark, not the initials of the voter, was thus held not to vitiate the vote" (*ibid.*, p. 59). A mark by which a voter can be identified does not mean any unusual mark. See *per* PHILLIMORE, J., in *Re Oldham Municipal Election, Cooper* v. *Ogden* (1908), 72 J. P. 115. Compare *Stepney Case* (1886), 4 O'M. & H. 34, 37; *Berwick-upon-Tweed Case* (1880), 3 O'M. & H. 178, 181.

Whether a circle or a line or a mark other than a cross is to be taken as showing a *bonâ fide* intention to vote without leaving a trace which can lead to the identification of the voter or not will be a question of fact in each case. See *Wigtown Case, supra; Stepney Case, supra; Buckrose Division Case* (1886), 4 O'M. & H. 110, 112. In the first two of these cases such a vote was disallowed, but in the third it was allowed. The *Wigtown Case, supra*, must be read with *Woodward* v. *Sarsons, supra*.

(*m*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 36 (4).

SECT. 1. Parliamentary.

mark need not be made by a pencil. A scratch with a finger-nail, if showing an unequivocal intention to vote for a particular candidate, is good; and the presumption is that every voter who applies for a ballot paper intends to vote for some candidate (*n*).

He must reject every vote which is bad for uncertainty (*o*). A vote is bad for uncertainty where it is upon the face of the ballot paper doubtful whether the voter intended to vote for one candidate or the other (*p*).

Finality of returning officer's decision.

635. The decision of the returning officer as to any question arising in respect of any ballot paper is final, subject to reversal on petition questioning the election or return (*q*).

Casting vote.

636. When an equality of votes is found to exist between any candidates at an election for a county or borough, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, if a registered elector of such county or borough, may give such additional vote, but he is not in any other case entitled to vote at an election for which he is returning officer (*r*).

Rejected ballot papers.

637. The returning officer must indorse "Rejected" on any ballot paper which he may reject as invalid, and must add to the

(*n*) *Cirencester Case* (1893), Day, 60.

(*o*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 36 (4).

(*p*) The weight of the objection that the vote is uncertain is obvious, for the simple reason that one candidate has just as much right to claim the vote as the other, and so it ought not to be counted for either; and the statute so enacts (*per* SIR HENRY HAWKINS, in the *Cirencester Case* (1893), Day, 155, at p. 159).

Where the voter clearly votes for both candidates, his paper is of course bad; but where there is a cross opposite to the name of one candidate and a smudge which appears to have been caused by rubbing out a mark opposite to the name of the other candidate, this is a good vote for the first-named candidate (*ibid.*, 54). If there is a cross opposite to the name of one candidate and another mark, which is not a cross, opposite to the name of the other candidate, it is a good vote for the first-named candidate (*ibid.*, 56). But where a mark which is not a cross is the only mark, it is a good vote for that candidate opposite to whose name it appears (*ibid.*, 57). And compare *Buckrose Division Case* (1886), 4 O'M. & H. 110, 112. If the intersection of the cross is in the space appropriated to one candidate, it is *primâ facie* a vote for that candidate (*Berwick-upon-Tweed Case* (1880), 3 O'M. & H. 178, 182; *Cirencester Case, supra; Re Oldham Municipal Election, Cooper* v. *Ogden* (1908), 72 J. P. 115). But if there is one cross which is clearly situated in the space appropriated to one candidate, it is a vote for the first-named candidate (*Cirencester Case, supra*, 57). Where there was a cross opposite to the name of the candidate and other crosses which had the effect of deleting that same name altogether, this was held to be a good vote for that candidate (*ibid.*, 58). But where the only mark upon the paper was a cross immediately upon the name of one of the candidates in such a way as to make it possible that the voter intended to strike that name out, the vote was disallowed (*Buckrose Division Case, supra*). Some cases are very difficult to decide, *e.g.*, where a cross is above the name of one candidate and a number of blotches by the side of the name of the other candidate. In such a case the judges differed, and the vote was therefore not counted (*Berwick-upon-Tweed Case, supra*). A ballot paper is not rendered void by reason of the voter placing his mark outside the ruled compartments on the paper, if the mark is in such a position opposite to the name of the candidate as to leave no doubt for whom the voter intended to vote (*Pontardawe Rural Council Election Petition*, [1907] 2 K. B. 313).

(*q*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 2.

(*r*) *Ibid.*, s. 31. See p. 145, *ante*.

indorsement "Rejection objected to," if an objection be in fact made by any agent (*s*) to his decision (*t*).

The returning officer must report to the Clerk of the Crown in Chancery the number of ballot papers rejected and not counted by him under the several heads of (1) want of official mark, (2) voting for more candidates than entitled to, (3) writing or mark by which voter could be identified, (4) unmarked or bad for uncertainty (*a*), these being the only four grounds which entitle a returning officer to reject and leave uncounted a vote which is in fact given upon a ballot paper and placed in the ballot-box (*b*). He must on request allow any agents of the candidates to copy the report (*c*).

SUB-SECT. 12.—*Disposal of the Ballot Papers.*

Sealing up the papers.

633. Upon the completion of the counting the returning officer must seal up in separate packets the counted and rejected ballot papers. He must not open the sealed packet of tendered ballot papers or of the marked copy of the register of voters and counterfoils, but must proceed in the presence of the agents of the candidates to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession, and the tendered votes list, and must reseal each sealed packet after examination. The returning officer must report to the Clerk of the Crown the result of such verification, and must on request allow any agents of the candidates, before such report is sent, to copy it (*d*).

Packets to be sent to clerk of the Crown.

639. The returning officer must forward to the Clerk of the Crown in the prescribed manner all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes list, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, indorsing on each packet a description of its contents, and the date of the election to which they relate, and the name of the county or borough for which such election was held (*e*).

Custody.

640. The Clerk of the Crown must retain for a year all documents relating to an election forwarded to him in pursuance of this enactment by a returning officer; and then, unless otherwise

(*s*) If there are no counting agents, the returning officer should call the attention of the election agent, if he be present, to the votes, if any, rejected, at any rate if there be any sort of possible question as to the propriety of the rejection, and should allow the election agent a hearing on the matter. This is in fact the practice of many returning officers, but there does not seem to be anything in the Act to compel a returning officer to take this course.

(*t*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 36.

(*a*) *Ibid.*, r. 36.

(*b*) *Woodward* v. *Sarsons* (1875), L. R. 10 C. P. 733, 748, the case of a municipal election petition, but laying down law which is applicable to parliamentary cases.

(*c*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 36.

(*d*) *Ibid.*, r. 37.

(*e*) *Ibid.*, r. 38.

SECT. 1. Parliamentary.

directed by an order of the House of Commons or of one of His Majesty's superior courts, must cause them to be destroyed (*f*).

Inspection of rejected ballot papers.

No person is to be allowed to inspect any rejected ballot papers in the custody of the Clerk of the Crown except under the order of the House of Commons or under the order of one of His Majesty's superior courts, to be granted by such court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the House or court making the same may think expedient, and must be obeyed by the Clerk of the Crown. Any power given to a court by this rule may be exercised by any judge of such court in chambers (*g*).

Inspection of counterfoils.

641. No person must, except by order of the House of Commons or of any tribunal having cognisance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the Clerk of the Crown. Such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the House or tribunal making the order may think expedient, provided that on making and carrying into effect any such order care is to be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid (*h*).

Inspection of other documents.

642. All documents forwarded, other than ballot papers and counterfoils, are to be open to public inspection at such time and under such regulations as may be prescribed by the Clerk of the Crown, with the consent of the Speaker of the House of Commons, and the Clerk of the Crown must supply copies of or extracts from the said documents to any person demanding the same on payment of such fees and subject to such regulations as may be sanctioned by the Treasury (*i*).

Production in evidence.

643. Where an order is made for the production by the Clerk of the Crown of any document in his possession relating to any specified election, the production by such Clerk or his agent of the document ordered, in such manner as may be directed by such order or by a rule of the court having power to make such order, is to be conclusive evidence that such document relates to the specified election, and any indorsement appearing on any packet of ballot papers produced by such Clerk or his agent is to be evidence of such papers being what they are stated to be by

(*f*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 39.
(*g*) *Ibid.*, r. 40. See *R.* v. *Beardsall* (1876), 1 Q. B. D. 452; *R.* v. *Quinlan*, [1908] 2 I. R. 155.
(*h*) *Ibid.*, r. 41.
(*i*) *Ibid.*, r. 42.

the indorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, is to be *primâ facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil (*j*).

University elections.

644. The above rules as to counting and disposal of the ballot papers do not apply to university elections.

In the case of a university election all voting papers received and recorded at such election, as well as any voting papers objected to for informality, or on any other grounds, are to be filed and kept by the officer intrusted with the care of the poll-books, or other documents relating to the said election, and any person is to be allowed to examine such voting papers at all reasonable times, and to take copies thereof upon payment of a fee of 1*s*. (*k*).

SUB-SECT. 13.—*The Declaration of the Result and Return of the Member as elected.*

Declaration of result.

645. After the returning officer has ascertained the result of the poll by counting the votes given to each candidate he must forthwith (*l*) declare to be elected the candidate or candidates to whom the majority of votes has been given, and return his or their names to the Clerk of the Crown (*m*). As soon as possible after the completion of the counting the returning officer must give public notice of the names of the candidates elected, and in the case of a contested election of the total number of votes given for each candidate, whether elected or not (*n*).

The return.

646. The return of a member or members elected to serve in Parliament for a county or borough is made by a certificate of the names of such member or members under the hand of the returning officer indorsed on the writ of election for such county or borough. Upon the return being made to the Clerk of the Crown he must enter in a book called the return book (*o*) the names of the several members returned to serve in Parliament, with the dates of their respective returns, and must transmit what is in substance a copy

(*j*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 43.
(*k*) University Elections Act, 1861 (24 & 25 Vict. c. 53), s. 4.
(*l*) Where the poll has been adjourned by reason of interruption or obstruction by riot or open violence (as to which see p. 307, *ante*), the returning officer must not finally declare the state of the poll or make proclamation of the member or members chosen until the poll so adjourned has been finally closed and the poll-books delivered or transmitted to such returning officer (Parliamentary Elections Act, 1835 (5 & 6 Will. 4, c. 36), s. 8).
(*m*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 2.
(*n*) *Ibid.*, Sched. I., Part I., r. 45.
(*o*) The return book must be kept by virtue of "An Act to prevent False and Double Returns of Members to serve in Parliament," stat. (1695) 7 & 8 Will. 3, c. 7, s. 5. See p. 333, *post*, for the reason which the statute assigns for the keeping of this book.

SECT. 1. Parliamentary.

of that book to the Clerk of the House of Commons, and then, and not until then, the members are allowed to take their seats (*p*).

Delivery by post.

647. The returning officer may, if he thinks fit, deliver the writ, with such certificate indorsed, to the postmaster of the principal post-office of the place of election or his deputy, and in that case he must take a receipt from the postmaster or his deputy for the same; and such postmaster or his deputy must then forward the same by the first post, free of charge under cover, to the Clerk of the Crown, with the words "Election Writ and Return" indorsed thereon (*q*).

The return is not complete until it reaches the hands of the proper officer so that he can act upon it (*r*).

False returns.

648. If any person returns any member to serve in Parliament for any place contrary to the last determination of the House of Commons of the right of election in such place, such return so made is a false return (*a*).

Every person who is duly elected to serve in Parliament for any place by such false return may sue the officers and persons making or procuring the same, and every or any of them, in the High Court of Justice (*b*), and may recover double the damages he sustains by reason thereof, together with his full costs of suit (*c*).

Double returns.

649. As to double (*d*) returns, it is enacted that if any officer wilfully, falsely, and maliciously (*e*) returns more persons than are required to be chosen by the writ or precept on which any choice is

(*p*) The practice after the Act, which, in accordance with the section cited, necessarily follows the previous practice, is thus stated by Lord COLERIDGE, C.J., in *Hurdle* v. *Waring* (1874), L. R. 9 C. P. 435, 442.

(*q*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 44.

(*r*) *Hurdle* v. *Waring*, *supra*. The servant of the housekeeper of the proper officer in that case received the return after office hours on 4th February, 1874, and delivered it to the principal clerk in the office of the Clerk of the Crown on the next day. He indorsed upon it the date of receipt thus: "Crown Office, 5th February, 1874, J. E." The latter date was held to be the date upon which the election was completed.

(*a*) "An Act to prevent False and Double Returns" etc., stat. (1695) 7 & 8 Will. 3, c. 7, s. 1. But for this statute the court would have declined jurisdiction in such cases upon the ground that "the judging of the right of election belongs to Parliament, that is to say, to the House of Commons" (*Prideaux* v. *Morrice* (1702), 7 Mod. Rep. 14. But WILLES, C.J., was of a different opinion; see *Myddleton* v. *Wynn* (1746), Willes, 597, 606, Ex Ch.).

(*b*) The original words of the Act are "in any of His Majesty's courts of record at Westminster," but the jurisdiction has passed to the High Court by the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16.

(*c*) "An Act to prevent False and Double Returns" etc., stat. (1695) 7 & 8 Will. 3, c. 7, s. 2. See for the ancient procedure in such a case "Action sur le Novel Act de 7 Will. 3 pur un Faux Retorn d'un Burgess de Parlement," *Gough* v. *Batemen et al.* (*circa* 1700), 1 Lut. 184.

(*d*) Double returns were held by an old parliamentary committee to include alternative returns (*Dumfermline, Stirling, and District Burghs Case* (1803), 1 Peck. 1). As to equality of votes, see p. 328, *ante*.

(*e*) Where in an Irish case a double return was made owing to a *bonâ fide* error, the court amended the return, but did not make the returning officer pay the costs (*Re Athlone* (*Borough*) *Election Petition*, *Sheil* v. *Ennis and Nugent* (1874), 8 I. R. C. L. 240).

made, the like remedy may be had against him and the party or parties that willingly procure the same, and every or any of them, by the party aggrieved at his election (*f*).

Contracts void.

650. All contracts, promises, bonds, and securities whatsoever made or given to procure any return of any member to serve in Parliament, or anything relating thereunto, are void; and whoever makes or gives such security, contract, promise, or bond, or any gift or award, to procure such false or double return, is liable to forfeit the sum of £300, one third part thereof to His Majesty, his heirs and successors, another third part thereof to the poor of the county, borough, or place concerned, and one third part thereof to the informer, with his costs, to be recovered in the High Court of Justice by an action (*g*).

Return book.

651. For the more easy and better proof of any such false or double return, the Clerk of the Crown for the time being must from time to time enter in the return book every single and double return of any member or members to serve in Parliament which are returned or come into his office or to his hands, and also every alteration and amendment which is made by him or his deputy in every such return, to which book all persons are to have free access at all seasonable times to search and take true copies of so much thereof as may be desired, paying a reasonable fee, and such book or a true copy thereof relating to such false or double return is admissible as evidence of the fact stated. In case the Clerk of the Crown does not within six days after any return comes into his office or to his hands (*h*) duly and fairly make any such entry, or makes any alteration in any return, unless by order of the House of Commons, or gives any certificate of any person not returned, or wilfully neglects or omits to perform the prescribed duties, he must for every such offence forfeit to the party and parties aggrieved the sum of £500, to be recovered as aforesaid, and must also forfeit and lose his office, and be for ever incapable of holding the same (*i*).

Every information or action for any such offence must be brought within the space of two years after the cause of action arises (*k*).

SUB-SECT. 14.—*The Returning Officer's Expenses.*

Account must be rendered.

652. Within twenty-one days after the day on which the return is made of the persons elected at the election the returning officer must transmit to every candidate (*l*) or other person from whom

(*f*) "An Act to prevent False and Double Returns" etc., stat. (1695) 7 & 8 Will. 3, c. 7, s. 3.

(*g*) *Ibid.*, s. 4.

(*h*) "Comes into his office or to his hands." For the distinction between these two alternatives, compare the facts in the case of *Hurdle* v. *Waring* (1874), L. R. 9 C. P. 435, decided under a different statute not having these alternatives.

(*i*) "An Act to prevent False and Double Returns" etc., stat. (1695) 7 & 8 Will. 3, c. 7, s. 5.

(*k*) *Ibid.*, s. 6.

(*l*) As to who is a candidate, see p. 264, *ante*. A candidate once proposed and seconded was held liable to pay the election auditor's fee under the Corrupt

SECT. 1. Parliamentary.

he claims payment either out of the deposit (*m*) or otherwise of any charges in respect of the election, or to the election agent of any such candidate, a detailed account showing the amounts of all the charges claimed by the returning officer in respect of the election, and the share thereof which he claims from the person to whom the account is transmitted (*n*). These charges must be in general accordance with a scale fixed by law (*o*). He must annex to the account a notice of the place where the vouchers relating to the account may be seen, and he must at all reasonable times, and without charge, allow the person from whom payment is claimed, or any agent of such person, to inspect and take copies of the vouchers (*p*). The returning officer is not entitled to any charges which are not duly included in his account (*q*).

Application for taxation of account.

653. If the person from whom payment is claimed objects to any part of the claim, he may, at any time within fourteen days from the time when the account is transmitted to him, apply to the county court (*r*) for a taxation of the account (*s*). The county court judge may depute his powers in this matter to the registrar, or other principal officer of the court (*t*), but in such case he cannot review the taxation himself (*a*). An application made to the registrar within the fourteen days when the judge is not sitting is well made for this purpose (*b*). The county court has jurisdiction to tax the amount in such manner and at such time and place as that court thinks fit, and finally to determine the amount payable to the returning officer, and to give and enforce judgment for the same as if such judgment were a judgment in an action in such court, and with or without costs at the discretion of the court. The foregoing does not apply to the charge of the returning officer for publication of accounts of election expenses (*c*).

Practices Prevention Act, 1854 (17 & 18 Vict. c. 102) (*Edwards* v. *Whithurst* (1860), 5 H. & N. 131).

(*m*) As to the deposit, see p. 277, *ante*.

(*n*) Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), s. 4.

(*o*) *Ibid.*, Sched. I. But the scale is not necessarily exhaustive (*Re South Eastern Division of Essex* (1887), 19 Q. B. D. 252). It is to be noted, however, that the sheriff is bound to preserve the peace of the county. If he is put to any extraordinary expense in this way, he must represent the matter when passing his accounts, or make direct representation to His Majesty's Government; but he has no right to recover such expenses from the candidates. Any special agreements may, however, be enforced according to the ordinary law of contracts (*per* LAWRENCE, J., *Wathen* v. *Sandys* (1811), 2 Camp. 640). The returning officer must not charge for professional assistance, unless he has had such assistance in fact (*Re Shoreditch Election, Ex parte Walker* (1887), 56 L. T. 529).

(*p*) Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), s. 4.

(*q*) *Ibid.*

(*r*) Except in the City of London, where it is the Mayor's Court that exercises these powers, and in Ireland the civil bill court. The court in question is that having jurisdiction at the place of the nomination (*ibid.*).

(*s*) *Ibid.*

(*t*) *Ibid.*

(*a*) *R.* v. *Lambeth County Court Judge* (1886), 17 Q. B. D. 96.

(*b*) *R.* v. *Bloomsbury County Court Judge* (1886), 17 Q. B. D. 789, C. A.

(*c*) Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), s. 4.

Claims against returning officer.

654. Every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him by or on behalf of the returning officer for the purposes of an election, except for publication of accounts of election expenses, must, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed particulars of such claim in writing, and the returning officer is not liable in respect of anything which is not duly stated in such particulars (*d*).

Examination of claims.

655. When application is made for taxation of the accounts of a returning officer, he may apply to the county court to examine any claim transmitted to him by any person in pursuance of this section, and that court, after notice given to such person and after hearing him and any evidence tendered by him, may allow or disallow, or reduce the claim objected to, with or without costs, and the determination of the court is final for all purposes and as against all persons (*e*). A candidate who has not been a party to the proceedings is nevertheless entitled to his share of any remission of expenses established thereby (*f*).

Ballot-boxes.

656. The returning officer must as far as practicable make use of ballot boxes, fittings, and compartments provided for municipal elections in the appropriate cases; and the court upon taxation of his costs must have regard to this provision (*g*).

Universities.

657. These provisions as to the returning officer's expenses do not apply to university elections (*h*).

SUB-SECT. 15.—*The Return and Declaration respecting Candidates' Election Expenses.*

Return as to candidates' expenses.

658. Within thirty-five days after the day on which the candidates returned at an election (*i*) are declared elected the election agent of every candidate at that election must transmit (*k*) to the returning officer a true return (*l*) respecting election expenses (*m*),

(*d*) Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), s. 5.

(*e*) *Ibid.*

(*f*) *Martin* v. *Tomkinson*, [1893] 2 Q. B. 121.

(*g*) Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), s. 6.

(*h*) *Ibid.*, s. 8.

(*i*) These provisions apparently apply to all elections of members of Parliament, including university elections. See Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 64.

(*k*) "Transmit," *i.e.*, send or remit. He must send it off before midnight of the day on which the thirty-five days expire. He need not lodge it with the returning officer by that day (*Mackinnon* v. *Clark*, [1898] 2 Q. B. 251, C. A., *per* A. L. SMITH, L.J., at p. 255).

(*l*) Inspection may be had and copies obtained of this return on payment of the respective fees mentioned in the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 35 (2).

(*m*) "Election expenses." See p. 298, *ante*. "It is a matter, I will not say of discretion, but of sound judgment, to say how far you can go back" (*Lancaster Division Case* (1896), 5 O'M. & H. 39, 45, *per* POLLOCK, B.). The judges in the *Cockermouth Division Case* (1901), 5 O'M. & H. 155, 156, were satisfied that a tea-party given by the Liberal Unionist Association need not under the circumstances have been included.

SECT. 1. Parliamentary.

in the prescribed form (*n*), or to the like effect, containing as respects that candidate—(a) a statement of all payments made by the election agent, together with all the bills and receipts; (b) a statement of the amount of personal expenses (*o*), if any, paid by the candidate; (c) a statement of the sums paid to the returning officer for his charges, or, if the amount is in dispute, of the sum claimed and the amount disputed; (d) a statement of all other disputed claims of which the election agent is aware; (e) a statement of all the unpaid claims, if any, of which the election agent is aware, in respect of which application has been or is about to be made to the High Court; (f) a statement of all money, securities, and equivalent of money received by the election agent from the candidate or any other person for the purpose of expenses incurred or to be incurred on account of or in respect of the conduct or management of the election, with a statement of the name of every person from whom the same may have been received (*p*).

Declaration.

The return must be accompanied by a declaration (*q*) made by the election agent before a justice of the peace in the prescribed form (*r*).

Where the candidate has named himself as his election agent, a statement of all moneys, securities, and equivalent of money paid by the candidate is to be substituted in the return for the statement of money, securities, and equivalent of money received by the election agent from the candidate; and the declaration by an election agent respecting expenses need not be made, and the declaration by the candidate respecting election expenses is to be modified accordingly (*s*).

At the same time that the agent transmits the return, or within seven days afterwards, the candidate must transmit or cause to be transmitted to the returning officer a declaration made by him before a justice of the peace in the prescribed form (*a*).

Consequences of non-compliance.

659. If the return (*b*) and declarations are not transmitted before the expiration of the time limited for the purpose, the candidate must not after the expiration of such time sit or vote in the House of Commons until either such return and declarations have been transmitted, or until the date of the allowance of an authorised excuse for the failure to transmit the same, and if he sits or votes in contravention of this enactment, he will forfeit £100 for every

(*n*) See Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), Sched. II., Part I.

(*o*) "Personal expenses." See note (*g*), p. 295, *ante*.

(*p*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 33 (1). If there are no expenses under any head, they should be returned as "*nil*" (see *Ex parte Pennington* (1898), 46 W. R. 415; *Ex parte Robson* (1886), 18 Q. B. D. 336). For the law of excuses in the event of inadvertent omission under such circumstances, see p. 404, *post*.

(*q*) *Ibid.*, Sched. II., Part I.

(*r*) *Ibid.*, s. 33 (2). For the form, see Sched. I., Part I.

(*s*) *Ibid.*, s. 33 (3).

(*a*) *Ibid.*, s. 33 (4). For the form, see Sched. II., Part I. As to the circumstances in which an authorised excuse for non-compliance with the provisions of the Act as to the return and declaration respecting election expenses will be granted, see pp. 405, *post*.

(*b*) It is not the law that a return with a blunder in it is no return, nor that in case of such a blunder this sub-section applies (*Mackinnon* v. *Clark*, [1898] 2 Q. B. 251, 258, C. A.).

day on which he so sits or votes to any person who sues for the same (*c*).

Absence of candidate abroad.

660. Where the candidate is out of the United Kingdom at the time when the return is so transmitted to the returning officer, the declaration may be made by him within fourteen days after his return to the United Kingdom, and in that case must be forthwith transmitted to the returning officer, but such delay in making his declaration will not exonerate the election agent from complying with the provisions of the Act as to his return and declaration respecting election expenses (*d*).

Payments by leave of court.

661. Where, after the date at which the return respecting election expenses is transmitted, leave is given by the High Court for any claims to be paid, the candidate or his election agent must, within seven days after the payment thereof, transmit to the returning officer a return of the sums paid in pursuance of such leave accompanied by a copy of the order of the court giving the leave (*e*).

Object of Act.

662. The law is such that every illegal payment, advance, or deposit, in respect of any expenses incurred on account of or in respect of the conduct or management of the election, may operate, if it constitutes a corrupt or illegal practice, to defeat the election; for either such payment, advance, or deposit is made by or through the election agent, in which case it must be disclosed in the return above mentioned, or it is not made by or through the election agent, in which case it is liable to attack as being *ipso facto* an illegal practice (*f*).

The candidate is obliged (in the declaration above referred to) solemnly and sincerely to declare that to the best of his knowledge and belief the return is correct; that except as appears from the return he has not, and to the best of his knowledge and belief no person, club, society, or association has on his behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the election; that he has paid his election agent a named sum and no more for the purpose of the said election; that, except as specified in the return, no money, security or equivalent for money has to his knowledge or belief been paid, advanced, given or deposited by anyone to or in the hands of his election agent or any other person for the purpose of defraying any expenses incurred on his behalf on account of or in respect of the conduct or management of the election; and that he will not, except so far as he may be permitted by law, at any future time, make or be party to the making or giving of any payment, reward, office, employment, or

(*c*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 33 (5).
(*d*) *Ibid.*, s. 33 (8).
(*e*) *Ibid.*, s. 33 (9).
(*f*) See p. 297, *ante*.

SECT. 1. Parliamentary.

valuable consideration, for the purpose of defraying any such expenses as last mentioned, or provide or be party to the providing of any money, security or equivalent for money for the purpose of defraying any such expenses (*g*).

The election agent's declaration must be, *mutatis mutandis*, to the same effect (*h*), and if either of these declarations is falsely made to the knowledge of the declarant, a corrupt practice is committed (*i*).

Publication of summary.

663. The returning officer within ten days after he receives from the election agent a return respecting election expenses must publish a summary of the return in not less than two newspapers circulating in the county or borough for which the election was held, accompanied by a notice of the time and place at which the return and declarations, including the accompanying documents, can be inspected, and may charge the candidate, in respect of such publication, the sum of two guineas in a county and one guinea in a borough (*k*). The return (*l*) and declarations, including the accompanying documents, sent to the returning officer by an election agent are to be kept at the office of the returning officer or at some convenient place appointed by him, and must at all reasonable times during two years next after they are received by him be open to inspection by any person on payment of a fee of 1*s*., and the returning officer must on demand furnish copies thereof or of any part thereof at the price of 2*d*. for every seventy-two words. After the expiration of the said two years the returning officer may cause the return and declarations, including the accompanying documents, to be destroyed, or, if the candidate or his election agent so require, must return the same to the candidate (*m*).

SECT. 2.—*Municipal.*

SUB-SECT. 1.—*In General.*

Municipal elections.

664. The law of elections herein presently to be set out applies to the vast majority of municipal elections; but the City of London (*n*) and certain other places (*o*) are exceptions, and the law in their case is somewhat modified (*p*).

It also applies in most respects to many elections which are not in the usual sense of the word "municipal" at all (*q*).

(*g*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), Sched. II., Part I.

(*h*) *Ibid.*

(*i*) See p. 293, *ante*.

(*k*) *Ibid.*, s. 35 (1); Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84), Sched. I., Parts I. and II.

(*l*) On the trial of an election petition the court will allow the Public Prosecutor to have a copy of the respondent's return of election expenses (*Hexham Division Case* (1892), 4 O'M. & H. 143).

(*m*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 35 (2).

(*n*) See p. 394, *post*.

(*o*) See pp. 395—397, *post*.

(*p*) See pp. 394—397, *post*.

(*q*) See pp. 356—394, *post*.

There is no writ in the case of a municipal election, but wherever a vacancy occurs the returning officer is *ipso facto* bound in due course (*r*) to hold an election for the office vacated—an obligation which will be enforced in case of necessity by mandamus (*s*).

In the ordinary case of a municipal corporation the principal offices to be filled are those of mayor, aldermen, and councillors (*t*).

The first election in point of time to be held in such a case is that of the councillors (*a*).

Definition of "candidate."

665. With regard to the election of councillors at municipal elections a candidate is defined to mean a person elected or having been nominated, or having declared himself a candidate for election (*b*). There seems little doubt that such declaration may be implied as well as expressed, and that what has been stated with respect to the commencement of the candidature for a parliamentary election (*c*) applies, *mutatis mutandis*, to other elections.

Any person who is disqualified to be a candidate may, if elected, be unseated on petition (*d*).

SUB-SECT. 2.—*Election of Councillors in Municipal Corporations.*

(i.) *Preliminary.*

Wards.

666. Where a borough has no wards, there must be an election of councillors for the whole borough (*e*); but where a borough has wards, there must be a separate election of councillors for each ward (*f*).

When election takes place.

There is no "general election" of all the councillors exactly corresponding to a "general election" of members of Parliament; but on the 1st of November (which is the ordinary day of election of councillors (*g*)) in every year one-third of the whole number of

(*r*) If the vacancy is "a casual vacancy in a corporate office," the election must be held within fourteen days after notice in writing of the vacancy has been given to the mayor or town clerk by two burgesses (Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 66 (1)).

(*s*) *Stratford-upon-Avon Case* (1886), 2 T. L. R. 431; and compare the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 70 (1).

(*t*) *Ibid.*, see Part II. of the Act generally.

(*a*) For the reason that the mayor and aldermen are elected by the council (*ibid.*, ss. 14, 15).

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 77; Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 34. As to the application of these Acts to elections for county, district, and parish councillors, and to guardians, see pp. 356—394, *post*.

(*c*) See p. 265, *ante*.

(*d*) *E.g.*, see *Re Gloucester Municipal Election Petition*, 1900, *Ford* v. *Newth*, [1901] 1 K. B. 683, where a candidate was unseated on election petition under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 12 (1) (c), which provides that a person is to be disqualified for being elected and for being a councillor, if he has directly or indirectly by himself or his partner any share or interest in any contract or employment with, by, or on behalf of the council. See the whole of the section and the preceding section. As to the various qualifications and disqualifications of candidates for municipal office, see title LOCAL GOVERNMENT.

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 50 (1).

(*f*) *Ibid.*, s. 50 (2).

(*g*) *Ibid.*, s. 52. When by the Act any act or proceeding is directed or allowed

SECT. 2. Municipal.

councillors for the borough or for the ward, as the case may be, go out of office, and their places are filled by election (*a*).

When a casual vacancy occurs there is a "bye election"; and the election is held by the same persons and in the same manner as an election to fill an ordinary vacancy (*b*).

Returning officer.

667. At an election of councillors for a whole borough the returning officer is the mayor (*c*). If the mayor is dead (*d*), or is absent or otherwise incapable of acting (*e*) in the execution of his powers and duties as to elections, the council must forthwith choose an alderman to execute those powers and duties in the place of the mayor (*f*).

At an election for a ward the returning officer is an alderman assigned for that purpose by the council at the meeting of the council which is held every year on the 9th of November (*g*). In case of the illness, absence, or incapacity to act of the alderman assigned to be returning officer at a ward election, the mayor may appoint to act in his stead another alderman, or if the number of aldermen does not exceed the number of wards, a councillor not being a councillor for that ward and not being enrolled in the ward roll for that ward (*h*).

Notice of election.

668. Nine days at least before the day for the election of a councillor the town clerk must prepare and sign a notice thereof. In the case of a borough election he must publish this notice by fixing it in some conspicuous place on or near the outer door of the town hall, or, if there be no town hall, in some conspicuous place in the borough. In the case of a ward election he must publish it by fixing it in some conspicuous place in the ward (*i*).

The mayor must at least four days before the election give public notice of the situation, division, and allotment of polling places for taking the poll at the election, and of the description of the persons entitled to vote thereat and at the several polling stations (*j*).

to be done on a certain day, then if that day happens to be a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation or thanksgiving, the act or proceeding is to be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days hereinbefore specified (*ibid.*, s. 230).

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 13 (2). The third to go out are the councillors who have been longest in office without re-election (*ibid.*, s. 13 (3)). The mayor and aldermen, during their respective offices, continue to be members of the council, notwithstanding anything in the Act as to councillors going out of office at the end of three years (*ibid.*, s. 38).

(*b*) *Ibid.*, s. 40 (1).

(*c*) *Ibid.*, s. 53 (1).

(*d*) *Scilicet*, "and if there is no time to elect another mayor under s. 66 of the Act."

(*e*) As for instance where he is himself a candidate for re-election as a town councillor (*R.* v. *White* (1867), L. R. 2 Q. B. 557).

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 67 (1).

(*g*) *Ibid.*, s. 53 (2).

(*h*) *Ibid.*, s. 67 (2).

(*i*) *Ibid.*, ss. 54 and 232.

(*j*) *Ibid.*, Sched. III., Part III., r. 2. The provisions of the Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., rr. 18 and 19, *supra*, p. 315, do not apply in the case of a municipal election (Municipal Corporations Act,

No election agent.

669. There is no provision in the case of an election of councillors for the appointment of a responsible election agent, such as may be appointed in the case of a parliamentary election (*k*); and all the duties in connection with election expenses, which in a parliamentary election fall in part at least upon the election agent (*l*), where such an agent is appointed (*m*), fall in an election of councillors upon the candidates themselves (*n*).

Paid and unpaid workers.

670. But a candidate in an election of councillors is allowed, like the candidate in a parliamentary election (*o*), to have (1) a limited number of paid assistants (*p*), who may or may not be electors, but who may not vote (*q*); and (2) an unlimited number of workers and agents, for whom he will be responsible upon the same principle and to the same extent as a candidate is responsible in the case of a parliamentary election (*r*).

The assistants engaged or employed for payment are limited in number as follows: (a) a number of persons may be employed, not exceeding two for a borough or ward, and if the number of electors in such borough or ward exceeds two thousand one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above two thousand, and such persons may be employed as clerks and messengers, or in either capacity; and (b) one polling agent may be employed in each polling station. This limitation does not apply to any engagement or employment for carrying into effect a contract *bonâ fide* made with any person in the ordinary course of business (*s*).

1882 (45 & 46 Vict. c. 50), Sched. III., Part III., r. 1). See title LOCAL GOVERNMENT.

(*k*) See p. 266, *ante*.

(*l*) See p. 266, *ante*.

(*m*) See p. 267, *ante*.

(*n*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70). See, *e.g.*, s. 21 (1).

(*o*) See p. 268, *ante*.

(*p*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 13 (1). See pp. 268 *et seq.*, *ante*.

(*q*) *Ibid.*, s. 13 (3).

(*r*) See p. 268, *ante*. But on the facts it may sometimes be that the inference to be drawn from particular evidence is somewhat different. Thus, in the *Swansea Case* (1909), *Times*, February 3rd, the arguments of B. F. WILLIAMS, K.C., and FOOTE, K.C., for the petitioner and respondent respectively, appear from the following passage in the commissioners' judgment: "It is true that in municipal petitions where there is no committee, and where there are no canvassing books, the whole aspect of affairs must, as it appears to me, be looked at upon a smaller scale, and that such evidence as that to which I have referred is not to be expected so easily. To this consideration I have given due weight; and I have not expected as much evidence as I should expect in a parliamentary petition. But it is also true that there is less agency of any kind existing in fact in municipal elections of this description, and the main principle is exactly the same. There must be employment on authorisation by the candidate of the agent to do some election work or the knowing adoption by the candidate of his work when done. This is the effect of the judgment of CHANNELL, J., in the *Great Yarmouth Case* (1906), 5 O'M. & H. 176, which has been accepted by both counsel as truly stating the law which it falls on me to apply."

(*s*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 13.

SECT. 2. Municipal.

The law as to unpaid workers and agents is the same as in parliamentary elections (*t*).

(iii.) *Nomination.*

Nomination of candidates.

671. The provisions as to nomination at an election of councillors are similar to, but not identical with, those which obtain in parliamentary elections (*a*).

Every candidate for the office of councillor must be nominated in writing (*b*). The nomination paper must state the surname and other names of the candidate, with his place of abode and description (*c*). The writing must be subscribed by two burgesses of the borough or ward, as the case may be, as proposer and seconder, and by eight other burgesses of the borough or ward, as assenting to the nomination (*d*).

A person is entitled to subscribe a nomination paper if he is enrolled in the burgess roll, or in the case of a ward election the ward roll, but not otherwise (*e*). No person must subscribe a nomination paper for more than one ward (*f*).

Each candidate must be nominated by a separate nomination paper, but the same burgesses, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more (*g*). When a person subscribes more nomination papers than one, his subscription will be inoperative in all but the one which is first delivered (*h*). This rule does not apply to a case where there are several vacancies and no burgess has signed more than one nomination paper for any one candidate or more nomination papers than there were vacancies (*i*).

Each person nominated must be enrolled in the burgess roll or entered in the separate non-resident list required by the Act to be made (*k*).

The town clerk must provide nomination papers, and must supply any burgess with as many nomination papers as may be required, and must, at the request of any burgess, fill up a nomination paper (*l*).

(*t*) See pp. 268—273, *ante*.

(*a*) Compare the Ballot Act, 1872 (35 & 36 Vict. c. 33) (see pp. 273 *et seq.*, *ante*), with the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), as hereinafter set out.

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), Sched. III., Part II., r. 1.

(*c*) *Ibid.*, r. 5.

(*d*) *Ibid.*, r. 2.

(*e*) *Ibid.*, s. 51 (1).

(*f*) *Ibid.*, s. 51 (2). Nothing in this section entitles any person to do any act therein mentioned who is prohibited by law from doing it, or relieves him from any penalty to which he may be liable for doing it (*ibid.*, s. 51 (3)).

(*g*) *Ibid.*, Sched. III., Part I., r. 3,

(*h*) *Ibid.*, Sched. III., Part II., r. 10.

(*i*) *Line* v. *Warren* (1884), 14 Q. B. D. 73. This follows from a close comparison between rr. 3 and 10. They are at first sight materially inconsistent; but the judgment of MATHEW, J., from which the words in the text are derived, goes far to explain the effect of the two rules as read together.

(*k*) *Ibid.*, r. 4.

(*l*) *Ibid.*, r. 6.

Delivery of nomination paper.

672. Every nomination paper subscribed as aforesaid must be delivered by the candidate, or his proposer or seconder, personally, and not by an agent (*m*), at the town clerk's office, seven days at least before the day of election, and before five o'clock in the afternoon of the last day for delivery of nomination papers (*n*). The town clerk must forthwith send notice of every such nomination to each candidate (*o*).

Objections to nominations.

673. The mayor must attend at the town hall on the day next after the last day for delivery of nomination papers for a sufficient time, between the hours of two and four in the afternoon, and must decide on the validity of every objection made in writing to a nomination paper (*p*).

Each candidate may by writing signed by him, or if he is absent from the United Kingdom then his proposer or seconder may by writing signed by him, appoint a person (hereinafter called "the candidate's representative") to attend the proceedings before the mayor on behalf of the candidate, and this appointment must be delivered to the town clerk before five o'clock in the afternoon of the last day for delivery of nomination papers (*q*).

Each candidate and his representative, but no other person, except for the purpose of assisting the mayor, is entitled to attend the proceedings before the mayor (*r*), and may, during the time appointed for the attendance of the mayor, object to the nomination paper of any other candidate for the borough or ward (*s*).

The decision of the mayor must be given in writing, and will, if disallowing the objection, be final, but, if allowing an objection, will be subject to reversal on petition questioning the election or return (*t*). His powers in any case are confined to deciding questions about the form of the nomination papers themselves, and cannot touch the matter of the qualification of the candidates (*a*).

(*m*) *Monks* v. *Jackson* (1876), 1 C. P. D. 683. If it is not delivered personally the objection is one which is cognisable by the mayor, whose decision allowing it may be questioned on a petition against the return of the successful candidate (*ibid.*).

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), Sched. III., Part II., r. 7. The case of *Monks* v. *Jackson*, *supra*, was decided under the Municipal Elections Act, 1875 (38 & 39 Vict. c. 40), s. 1 (3), repealed by the 1882 Act, but the words construed are identical with those in the present Act.

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), Sched. III., Part II., r. 8.

(*p*) *Ibid.*, r. 9. This rule must be read with the above-stated provisions that (1) if the mayor is dead, or is absent or otherwise incapable of acting in the execution of his powers and duties as to elections under the Act, the council must forthwith choose an alderman to execute those powers and duties in the place of the mayor; (2) in case of the illness, absence, or incapacity to act of the alderman assigned to be returning officer at a ward election, the mayor may appoint to act in his stead another alderman, or, if the number of aldermen does not exceed the number of wards, a councillor not being a councillor for that ward, and not being enrolled in the ward roll for that ward (*ibid.*, s. 67).

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), Sched. III., Part II., r. 11.

(*r*) *Ibid.*, r. 12.

(*s*) *Ibid.*, r. 13.

(*t*) *Ibid.*, r. 14; see pp. 486 *et seq.*, *post*.

(*a*) *Pritchard* v. *Bangor Corporation* (1888), 13 App. Cas. 241. The following

SECT. 2. **Municipal.**

Publication of nominations.

674. The town clerk must, at least four days before the day of election, cause the surnames and other names of all persons validly nominated with their respective abodes and descriptions, and the names of the persons subscribing their nominations as proposers and seconders, to be printed and fixed on the town hall, and in the case of a ward election in some conspicuous place in the ward (*b*).

Nomination of absent person.

675. The nomination of a person absent from the United Kingdom will be void, unless his written consent, given within one month before the day of his nomination in the presence of two witnesses, is produced at the time of his nomination (*c*); and if no such consent is produced and one other candidate only is nominated, that other candidate is entitled to be declared to have been elected (*d*).

Withdrawal of candidate.

676. When the number of valid nominations exceeds that of the vacancies, any candidate may withdraw from his candidature by notice signed by him and delivered at the town clerk's office not later than two o'clock in the afternoon of the day next after the last day for delivery of nomination papers. Such notices are to take effect in the order in which they are delivered, and no such notice is to have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies (*e*).

Burgess or ward roll.

677. For the purposes of the provisions relating to proceedings preliminary to election, the burgess roll or ward roll which will be in force on the day of election is deemed to be the burgess roll or ward roll, and a person whose name is inserted in one of the lists from which the burgess roll or ward roll will be made up is deemed to be enrolled in that roll, although that roll is not yet completed (*f*).

decision was given under the Municipal Elections Act, 1875 (38 & 39 Vict. c. 40). At the annual election of town councillors the town clerk of Northampton issued a notice in the prescribed form, but erroneously stated the last day for the delivery of nomination papers to be 23rd October, which did not leave the prescribed number of clear days between that day and the day of election, namely, 1st November. Wright, a candidate for one of the two vacancies, duly delivered his nomination paper at the town clerk's office on 22nd October; but, inasmuch as one of the eight burgesses had written one of his christian names with a contraction "Fredk." instead of "Frederick," this candidate Wright, supposing that to be a fatal objection, without notice and without the knowledge of the town clerk, got the paper back from a clerk in the office and returned it on the following day re-signed by the burgess. Turner, another candidate, delivered his nomination paper on 23rd October. Howes and Pierce, two other candidates, who had duly delivered their nomination papers on 22nd October, objected to the allowance of the nomination papers of Wright and Turner. The mayor, assuming to have authority to hear it, disallowed the objection, and Wright and Turner were declared duly elected. BRETT, DENMAN, and ARCHIBALD, JJ., held that the mayor had no power to deal with the objection as to the time of delivering the nomination papers, and that his decision might be questioned on petition, and they declared the election void (*Howes* v. *Turner* (1876), 1 C. P. D. 670).

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), Sched. III., Part II., r. 15.

(*c*) *Ibid.*, r. 16.

(*d*) *Brown* v. *Benn* (1889), 53 J. P. 167.

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), Sched. III., Part II., r. 17.

(*f*) *Ibid.*, r. 18.

(iv.) *Freedom of Election and the Prevention of Corrupt and Illegal Practices.*

SECT. 2. Municipal.

Election must be free.

678. As in the case of a parliamentary election (*g*), an election of councillors must be free (*h*), but, subject to this (*i*) and to certain defined restrictions, every candidate at such an election has the same right as in the case of parliamentary elections, up to and including the day of the poll, to take all proper and legitimate measures to canvass the electorate and persuade them to vote for him (*k*).

Apart altogether from the effect of the committing by candidates or their agents of any statutory corrupt practices, an election of councillors will be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament (*l*) avoid a parliamentary election (*m*).

Corrupt practices.

679. The election of any candidate as a councillor may be avoided if that candidate by himself or his agents has been guilty of a corrupt practice or an illegal practice (*n*).

A corrupt practice, for this purpose, means (1) treating; (2) undue influence; (3) bribery; or (4) personation—all the elements of which offences are the same as those which have been explained in connection with parliamentary elections (*o*); or (5) aiding, abetting, counselling and procuring the offence of personation (*p*).

It is also a corrupt practice if the candidate knowingly makes the prescribed declaration falsely, as in the case of a parliamentary election (*q*).

Illegal practices.

680. The provisions as to what are illegal practices at an election of councillors are similar to, but not identical with, those which obtain in the case of parliamentary elections (*r*).

It is an illegal practice, subject to any exception which may be lawfully allowed (*s*), if any person makes any payment or contract for payment for the purpose of promoting or procuring the election of a candidate at an election of councillors—(a) on account of the

(*g*) See p. 278, *ante*.
(*h*) In the sense explained at p. 278, *ante*.
(*i*) This qualification covers the case of general corruption etc. mentioned in the next paragraph of the text.
(*k*) See p. 278, *ante*.
(*l*) See pp. 279—281, *ante*.
(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 81.
(*n*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), ss. 3, 5.
(*o*) See pp. 281 *et seq.*, *ante*.
(*p*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 2, and Sched. III., Part I., which, upon being compared with the pages referred to in the last note, will establish the proposition in the text.
(*q*) *Ibid.*, s. 21 (5); Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 33 (7). See p. 293, *ante*.
(*r*) Compare the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 7 *et seq.*, with the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), ss. 4 *et seq.* The decisions on this subject—many of which were given in cases of elections of councillors—were set out once for all, pp. 293—304, *ante*, as the principles are common to parliamentary cases and to those now under consideration.
(*s*) See p. 407, *post*.

SECT. 2. Municipal.

conveyance of electors to the poll, as in the case of parliamentary elections (*t*); or (b) to an elector for the use of premises for the exhibition of addresses etc., as in the case of parliamentary elections (*a*); or (c) on account of any committee-room in excess of the prescribed number—that is to say, if the election is for a borough, one committee-room for the borough, and if the election is for a ward, one committee-room for the ward, and if the number of electors in such borough or ward exceeds two thousand, one additional committee-room for every two thousand electors and incomplete part of two thousand electors over and above the said two thousand (*b*).

It is also an illegal practice if any person receives such payment, or is a party to any such contract, knowing the same to be contrary to the Act (*c*).

Limit of expenses.

681. It is an illegal practice, subject to such exceptions as may be lawfully allowed, if any candidate or agent of a candidate, or person on behalf of a candidate, at an election of councillors knowingly pays any sum or incurs any expense, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, save that a sum may be paid and expense incurred not in excess of the maximum following—that is to say, the sum of £25, and if the number of electors in the borough or ward exceeds five hundred, an additional amount of 3*d.* for each elector above the first five hundred electors (*d*). Where there are two or more joint candidates at such an election, the maximum amount of expenses must for each of such joint candidates be reduced by one-fourth, or if there are more than two joint candidates, by one-third (*e*). Where two or more candidates at such election by themselves, or any agent or agents, hire or use the same committee-room for such election, or employ or use the services of the same clerks, messengers, or polling agent at such election, or publish a joint address or joint circular or notice at such election, those candidates are deemed to be joint candidates at such election. But the employment and use of the same committee-room, clerks, messengers, or polling agent, if accidental or casual or of a trivial or unimportant character, is not to be deemed of itself to constitute persons joint candidates. A candidate may cease to be a joint candidate, and where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his

(*t*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 4 (1) (a), (2); see p. 294, *ante*.

(*a*) *Ibid.*, s. 4 (1) (b), (2), subject to the same exception as that set out p. 294, *ante*, as to persons whose business it is to exhibit addresses etc. (*ibid.*, s. 4 (3)).

(*b*) *Ibid.*, s. 4 (1) (c), (2).

(*c*) *Ibid.*, s. 4 (2).

(*d*) *Ibid.*, s. 5 (1), (2).

(*e*) *Ibid.*, s. 5 (3).

election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess is to be deemed to have arisen from a reasonable cause, and an excuse may then be allowed (*f*).

Procuring improper votes.

682. It is an illegal practice to induce or procure prohibited persons to vote in all cases where such inducing or procuring would be an illegal practice in the case of a parliamentary election (*g*), or to publish a false statement of the withdrawal of candidates in all cases where such publication would be an illegal practice at a parliamentary election (*h*). But in either case a candidate is not to be liable, nor is his election to be avoided, for such an illegal practice if it was committed without his knowledge or consent (*i*).

Illegal payments.

683. It is an illegal payment, and if the offence is committed by a candidate or with his knowledge or consent an illegal practice (*k*), to provide money for any payment contrary to the provisions of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, or for any expenses incurred in excess of any maximum amount allowed by the Act, or for replacing any money expended in any such payment, except where the same may have been previously allowed (*l*).

To induce withdrawal.

684. It is an illegal payment, and if the offence is committed by the candidate or with his knowledge or consent an illegal practice (*m*), corruptly to induce or procure any person to withdraw from being a candidate in consideration of any payment or promise of payment. Any person withdrawing in pursuance of such inducement is equally guilty (*n*).

For bands, flags etc.

It is an illegal payment, and if the offence is committed by the candidate or with his knowledge or consent an illegal practice (*o*), if any payment or contract for payment is made on account of bands of music, torches, flags, banners, cockades, ribbons or other marks of distinction in all cases where it would be such an illegal payment or illegal practice in the case of a parliamentary election (*p*).

(*f*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 5 (4).

(*g*) *Ibid.*, s. 6 (1); and compare the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 9 (1); see p. 296, *ante*.

(*h*) *Ibid.*, s. 6 (2); and compare the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 9 (2); see p. 296, *ante*.

(*i*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 6 (3).

(*k*) *Ibid.*, s. 17 (2).

(*l*) *Ibid.*, s. 9; see p. 407, *post*.

(*m*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 17 (2).

(*n*) *Ibid.*, s. 11; and compare the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 15; see p. 301, *ante*.

(*o*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 17 (2).

(*p*) *Ibid.*, s. 12; and compare the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 16; see p. 301, *ante*.

SECT. 2. Municipal.

Conveyances.

685. It is an illegal employment, and if the offence is committed by the candidate or with his knowledge or consent an illegal practice (*q*), to let, lend, or employ hackney carriages etc., or any carriage, horse or other animal etc., hire, borrow, or use any such carriage etc., for the purpose of the conveyance of electors to or from the poll at an election of councillors in all cases where it would be such an illegal employment or illegal practice at a parliamentary election (*r*).

Paid workers.

686. It is an illegal employment, and if the offence is committed by the candidate or with his knowledge or consent an illegal practice (*s*), if any person is engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except as prescribed in the case of an election of councillors, in all cases where such illegitimate engagement or employment would be an illegal employment or illegal practice in the case of a parliamentary election (*t*).

Absence of printer's impress.

687. It is an illegal practice if the candidate prints, publishes or posts, or causes to be printed, published, or posted, any bill, placard, or poster having reference to an election of councillors which fails to bear upon its face the name and address of the printer and publisher thereof in all cases where such act would be an illegal practice in the case of a parliamentary election (*u*).

There is in all these cases of illegal payment the same saving for creditors as in the case of a parliamentary election (*a*).

Unlawful committee-rooms and rooms for holding meetings.

688. It is an illegal hiring, and if the offence is committed by a candidate or with his knowledge or consent an illegal practice (*b*), if any person hires or uses any premises which are licensed for the sale of any intoxicating liquor, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises, or any premises where any intoxicating liquor is supplied to the members of a club, society or association, or any part of any such premises, for the purpose of promoting or procuring the election of a candidate, either as a committee-room as in parliamentary elections, or for holding a meeting (there being a difference herein as to the latter purpose

(*q*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 17 (2).

(*r*) *Ibid.*, s. 10; and compare the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 14; see p. 303, *ante*.

(*s*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 17 (2).

(*t*) *Ibid.*, s. 13; and compare the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 17; see p. 302, *ante*.

(*u*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 14; and compare the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 18; see p. 296, *ante*.

(*a*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 15; and compare the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 19; see p. 304, *ante*.

(*b*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 17 (2).

from the law obtaining in the case of parliamentary elections), and the person letting or permitting the use of prohibited premises or part thereof if he knew it was intended to use the same in contravention of this provision is also guilty of illegal hiring (*c*). But this does not apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations if there is no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied (*d*).

Unauthorised payments.

689. It is an illegal practice if any person makes a payment where a claim in respect of any expenses incurred by or on behalf of a candidate on account of or in respect of the conduct or management of such election is not sent in within fourteen days after the day of election, or where any expenses incurred as aforesaid are not paid within twenty-one days after the day of election; but if such payment is made without the sanction or connivance of the candidate, the election of such candidate is not void, nor is he to be subject to any incapacity under the Act by reason only of such payment having been made (*e*).

Failure to make return.

It is an illegal practice if a candidate, without such authorised excuse as is hereafter mentioned (*f*), fails to make the return and declaration of expenses prescribed by law (*g*).

False statements; disturbing meeting.

It is not an illegal practice to make a corrupt false statement at a municipal election (*h*), nor to disturb a public meeting held in connection therewith (*i*).

(v.) *The Poll etc.*

Distinctions as to polling etc.

690. The poll at every contested election of councillors must, so far as circumstances admit, be conducted in the same manner as the poll at a contested parliamentary election, and, subject to the modifications hereinafter set out, all such provisions of the Ballot Act, 1872 (*k*), as relate to or are concerned with a poll at a parliamentary election apply to a poll at a contested municipal election of councillors. But it is provided that the term "returning officer" means the mayor or other officer who, under the law relating to elections of councillors, presides at such elections; and the term "petition questioning the election or return" means any

(*c*) Municipal Elections (Corrupt and Illegal) Practices Act, 1884 (47 & 48 Vict. c. 70), s. 16 (1); and compare the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 20; see p. 304, *ante*.

(*d*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s 16 (2).

(*e*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 21 (1).

(*f*) See p. 407, *post*.

(*g*) *Ibid.*, s. 21 (5); see p. 351, *post*.

(*h*) Because the Corrupt and Illegal Practices Prevention Act, 1895 (58 & 59 Vict. c. 40), does not apply to municipal elections. But note that some false statements may amount to fraudulent devices within the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 2, which does apply to municipal elections. See p. 292, *ante*.

(*i*) See the Public Meeting Act, 1908 (8 Edw. 7, c. 66), s. 1.

(*k*) 35 & 36 Vict. c. 33.

SECT. 2. **Municipal.**

proceeding in which an election of councillors can be questioned. The mayor must provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll. All expenses must be defrayed in manner provided by law (*l*) with respect to the expenses of a municipal election. No return is to be made to the Clerk of the Crown. Nothing in the Ballot Act, 1872, is to be deemed to authorise the appointment of any agents of a candidate in an election of councillors; but if in the case of an election of councillors any agent of a candidate is appointed, and a notice in writing of such appointment is given to the returning officer, the provisions of the Act with respect to agents of candidates will, so far as respects such agent, apply in the case of that election. The provisions of the Act with respect to the voting of a returning officer, the use of a room for taking a poll, and the right to vote of persons whose names are on the register of voters, do not apply in the case of a municipal election. If a candidate dies between nomination and the day fixed for the poll, the returning officer must countermand the notice of poll (*m*).

Conduct of election.

691. An election of councillors must, except in so far as relates to the taking of the poll in the event of its being contested, be conducted in the manner in which it would have been conducted if the Act had not passed (*n*). Assessors are not to be elected in any ward of any municipal borough, and an election of councillors need not be held before the assessors or their deputies, but may be held before the mayor, alderman, or other returning officer only (*o*).

Modifications of the Ballot Act.

692. In the application of the provisions of the Ballot Act, 1872 (*p*), to elections of councillors the following modifications are to be made:—

The expression "register of voters" means the burgess roll of the burgesses of the borough, or, in the case of an election for the ward of a borough, the ward list; and the mayor must provide true copies of such register for each polling station.

All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the Clerk of the Crown must be delivered to the town clerk of the municipal borough in which the election is held, and must be kept by him among the records of the borough (*q*); and the rules applying in the case of parliamentary elections with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents, apply respectively to the

(*l*) Namely, out of the borough fund. See Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 140.

(*m*) *R.* v. *Stewart*, [1898] 1 Q. B. 552.

(*n*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 20.

(*o*) *Ibid.*, s. 21; see p. 352, *post*.

(*p*) 35 & 36 Vict. c. 33.

(*q*) Where a criminal information was shown against a town clerk, he could not be compelled to keep the papers longer than the prescribed period. But if he destroyed them it would be a strong matter of comment (*R.* v. *Nicholetts* (1836), 5 Ad. & El. 376).

ballot papers and documents so in the custody of the town clerk, with these modifications, namely: An order of the county court having jurisdiction in the borough, or any part thereof (*r*), or of any tribunal in which a municipal election is questioned, is to be substituted for an order of the House of Commons or of one of His Majesty's superior courts; but an appeal from such county court may be had in like manner as in other cases in the county court; the regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied are to be prescribed by the council of the borough with the consent of one of His Majesty's principal Secretaries of State; and, subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession, is to be subject to the directions of the council of the borough; nothing in the above-mentioned rules with respect to the day of the poll applies to an election of councillors (*s*).

Subject to the above exceptions, all the rules which apply in the case of a parliamentary election as to the counting of the votes (*t*), as to the disposal of the ballot papers (*u*), as to the declaration of the result, and as to the return of the candidate elected (*x*) apply also in the case of an election of councillors (*a*).

(vi.) *Return and Declaration as to Expenses.*

Candidate must make return of expenses.

693. Within twenty-eight days after the day of election of a councillor every candidate at such election must send to the town clerk a return of all expenses incurred by such candidate or his agents on account of or in respect of the conduct or management of such election, vouched (except in the case of sums under 20*s.*) by bills stating the particulars and receipts, and accompanied by a declaration by the candidate, made before a justice, in the prescribed form or to the like effect (*b*).

After the expiration of the time for making such return and declaration the candidate, if elected, must not, until he has made the return and declaration, or until the date of the allowance of some authorised excuse, sit or vote in the council (*c*).

Custody and inspection.

The return and declaration must be kept by the town clerk at his office, and must at all reasonable times during the twelve months

(*r*) When the county council has made such an order, the court looks at the ballot papers upon a criminal trial. See *R.* v. *Beardsall* (1876), 1 Q. B. D. 452, C. C. R.; and compare *R.* v. *Quinlan*, [1908] 2 I. R. 155.

(*s*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part II.

(*t*) See pp. 326 *et seq.*, *ante*.

(*u*) See pp. 329 *et seq.*, *ante*.

(*x*) See pp. 331 *et seq.*, *ante*.

(*a*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 20. It is clear that the word "poll" in that section refers to all such matters, for the exceptions are named and the maxim of the law is *Exceptio probat regulam*. See 11 Co. Rep. 41.

(*b*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 21 (3). The case law on this subject has been set out once for all, see pp. 331 *et seq.*, *ante*. There is a curious difference between the forms used in parliamentary and municipal elections respectively. The "declaration" in the latter case does not in terms refer to and verify the statement of expenses contained in the return.

(*c*) *Ibid.*, s. 21 (4).

SECT. 2. Municipal.

next after they are received by him be open to inspection by any person on payment of the fee of 1*s.*; and the town clerk must, on demand, furnish copies thereof, or of any part thereof, at the price of 2*d.* for every seventy-two words (*d*). After the expiration of the said twelve months the town clerk may cause the return and declaration to be destroyed, or if the candidate so require, must return the same to him (*e*).

SUB-SECT. 3.—*Election of Mayor in Municipal Corporations.*

Time for election.

694. The election of mayor takes place next after the election of the councillors (*f*). It is essential that this order of events should be duly followed, since an election of the aldermen before that of the mayor is void, and the election of the mayor after that of the aldermen is likewise void (*g*).

The council are bound to hold one of their four quarterly meetings (*h*) at noon on each 9th of November (*i*), which is the ordinary day of election of the mayor (*k*), unless the 9th of November is a Sunday or a day appointed for public fast, humiliation, or thanksgiving (each of which days is to be considered a *dies non*), in which case the next day thereafter, not being such a *dies non*, is to be substituted (*l*). The election of the mayor must be the first business transacted at the quarterly meeting of the council on the day of election (*m*). No particular method of election is prescribed by law.

On a casual vacancy the election must be held within fourteen days after notice in writing of the vacancy has been given to the mayor or town clerk by two burgesses (*n*). The notice of the meeting for the election must be signed by the town clerk (*o*).

Mayor is elected by council.

695. The mayor is elected by the council (*p*). The council for this purpose consists of the outgoing mayor (*q*), the outgoing

(*d*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 21 (10).

(*e*) *Ibid.* s., 21 (11).

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 61. As to a mandamus for the election of a mayor, see *R.* v. *Pembroke Corporation* (1840), 8 Dowl. 302. It was held in *R.* v. *Owens* (1859), 2 E. & E. 86, that when the mayor was one of the councillors to go out of office on November 1st, he caused a vacancy in the number of councillors, though as mayor he continued a member of the council till November 9th. A town councillor whose election is subsequently declared void cannot, prior to the avoidance of his election, give a valid vote for the election of a mayor (*Bland* v. *Buchanan*, [1901] 2 K. B. 75).

(*g*) *R.* v. *M'Gowan* (1840), 11 Ad. & El. 869. See *R.* v. *Dudley* (1840), 11 Ad. & El. 875; *R.* v. *Maddy* (1840), 11 Ad. & El. 878; *R.* v. *Stanley* (1840), 11 Ad. & El. 882.

(*h*) Municipal Corporations Act, 1882 (45 & 45 Vict. c. 50), s. 22 (1), and Sched. II., r. 1.

(*i*) *Ibid.*, s. 22 (1), and Sched. II., r. 2.

(*k*) *Ibid.*, s. 61 (1).

(*l*) *Ibid.*, s. 230 (1).

(*m*) *Ibid.*, s. 61 (2).

(*n*) *Ibid.*, s. 66 (1).

(*o*) *Ibid.*, s. 66 (2).

(*p*) *Ibid.*, s. 15.

(*q*) Who continues in office until his successor has accepted office and has

aldermen (*r*), and the newly-elected councillors (*s*). In the case of equality of votes the chairman, that is to say, the outgoing mayor if he be present (*t*), has the casting vote, even in cases when he is not entitled to vote at all in the first instance (*a*). A candidate for any office is precluded from acting as chairman at that election (*b*), and is incapable of acting as a returning officer (*c*). If this provision is disobeyed, and the candidate so acting as chairman is returned at the head of the poll, he may be unseated on petition (*d*).

Qualification.

696. The mayor must be a fit person elected as aforesaid by the council from among the aldermen or councillors or persons qualified to be such (*e*). A woman is not disqualified, but she cannot by virtue of holding the office be a justice of the peace (*f*). When a salary is attached to the office of mayor, a candidate is disqualified from voting for himself (*g*).

Must not incur expenses.

697. Subject to any exception to be allowed in circumstances to be set forth hereafter (*h*), no sum must be paid and no expense must be incurred for or on behalf of a candidate for the mayoralty, whether before, during, or after the election, in respect of or on account of the conduct of or management of such election (*i*). Any candidate for the mayoralty, or agent of a candidate, or person, who knowingly acts in contravention of this provision will be guilty of an illegal practice (*k*), and if the offender be the candidate or his agent, the election will be avoided thereby (*l*).

made and subscribed the required declaration (Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 15 (3)). For acceptance of office, see title LOCAL GOVERNMENT.

(*r*) An outgoing alderman may vote although the person for whom he votes is an alderman (*ibid.*, s. 61 (3)).

(*s*) *Ibid.*, s. 102.

(*t*) *Ibid.*, s. 22 (1), and Sched. II., r. 9. If the mayor is absent, then the deputy-mayor, if chosen for that purpose by the members of the council then present, is to be chairman. If both the mayor and the deputy-mayor are absent or the deputy-mayor, being present, is not chosen, then such alderman, or in the absence of all the aldermen such councillor, as the members of the council then present choose is to be chairman (*ibid.*).

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 61 (4). But he may vote in the first instance if not disqualified (*Nell* v. *Longbottom*, [1894] 1 Q. B. 767). A hypothetical casting vote, to be counted only in case of there being found to be an equality of votes, is valid (*Bland* v. *Buchanan*, [1901] 2 K. B. 75). Equality of votes means equality of valid votes (*ibid.*).

(*b*) *R.* v. *Owens* (1859), 2 E. & E. 86.

(*c*) *R.* v. *White* (1867), L. R. 2 Q. B. 557.

(*d*) *R.* v. *Morton*, [1892] 1 Q. B. 39.

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 15 (1).

(*f*) Qualification of Women (County and Borough Councils) Act, 1907 (7 Edw. 7, c. 33), s. 1 (1).

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 22 (3), as interpreted in *Nell* v. *Longbottom*, *supra*.

(*h*) See p. 407, *post*.

(*i*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 5 (1).

(*k*) *Ibid.*, s. 5 (2).

(*l*) *Ibid.*, s. 8 (2).

Time for election.

698. The next election in point of time after the election of the mayor is that of the aldermen (*m*). The ordinary day of election of aldermen is the 9th of November (*n*); and the election must be held at the quarterly meeting of the council immediately after the election of the mayor, or, if there is a sheriff, immediately after the appointment of the sheriff (*o*).

Qualification.

The aldermen must be fit persons elected by the council (*p*); and the number of aldermen is to be one third of the number of councillors (*q*). A person is not qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor (*r*). If a councillor is elected to and accepts the office of alderman he vacates his office of councillor (*s*).

Term of office.

699. The term of office of an alderman is six years (*t*). On the ordinary day of election of aldermen in every third year one half of the whole number of aldermen must go out of office, and their places must be filled by election (*u*). The half to go out are those who have been aldermen for the longest time without re-election (*x*).

Outgoing alderman cannot vote.

700. An outgoing alderman, though "mayor elect," must not vote (*a*); nor may such a one vote even if he be "mayor qualified" and has made and subscribed the statutory declaration required from the mayor (*b*).

Method of voting.

701. Every person entitled to vote may vote for any number of persons, not exceeding the number of vacancies, by signing and personally delivering at the meeting to the chairman a voting paper containing the surnames and other names and places of abode and description of the person or persons for whom he votes (*c*). If this provision is not complied with, then the mayor and corporation may be compelled by mandamus to hold a new election (*d*).

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 60 (1).
(*n*) *Ibid.*
(*o*) *Ibid.*, s. 60 (2).
(*p*) *Ibid.*, s. 14 (1).
(*q*) *Ibid.*, s. 14 (2).
(*r*) *Ibid.*, s. 14 (3). For disqualification of councillors, see *ibid.*, s. 11 (2), (3), (4), and title LOCAL GOVERNMENT.
(*s*) *Ibid.*, s. 14 (4).
(*t*) *Ibid.*, s. 14 (5).
(*u*) *Ibid.*, s. 14 (6)
(*x*) *Ibid.*, s. 14 (7).
(*a*) *Ibid.*, s. 60 (3).
(*b*) *Bridport Election Petition, Hounsell* v. *Suttill* (1887), 19 Q. B. D. 498. As to the making and subscribing of the statutory declaration, see title LOCAL GOVERNMENT.
(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 60 (4).
(*d*) *R.* v. *Wilton Corporation* (1886), 34 W. R. 273. The town of Wilton was incorporated by charter, whereby the number of councillors was fixed at twelve, and temporary officers were appointed to carry out the election under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50). The first election was held on 2nd November, 1885, and twelve councillors were elected. On 9th November an election was held for the purpose of electing the mayor, town clerk, treasurer, and four aldermen. The mayor nominated by the charter presided. Each councillor who voted used a blank slip of paper as a voting

Where the papers are inadvertently mixed so that signatures appear on the wrong papers but the general result is that intended, this inadvertence does not invalidate the voting paper (*e*).

Casting vote.

702. The chairman as soon as all the voting papers have been delivered must openly produce and read them, or cause them to be read, and then deliver them to the town clerk to be kept for twelve months (*f*). In case of equality of votes the chairman, although an outgoing alderman or otherwise not entitled to vote in the first instance, has the casting vote (*g*). A casting vote for this purpose is a vote given after the ordinary votes have been counted and have been found to be equal (*h*).

Declaration of result.

The persons, not exceeding the number of vacancies, who have the greatest number of votes are to be declared by the chairman to be, and thereupon will be, elected as aldermen (*i*).

No expenses to be incurred.

Subject to any exception to be allowed in circumstances to be set forth hereafter (*k*), no sum must be paid and no expense must be incurred for or on behalf of a candidate for the office of alderman, whether before, during, or after an election, in respect of or on account of the conduct or management of such election (*l*). Any candidate for this office or agent of a candidate who knowingly acts in contravention of this provision will be guilty of an illegal practice (*m*), and if the offender be the candidate, or his agent, the election will be avoided thereby (*n*).

SUB-SECT. 5.—*Election of Elective Auditors in Municipal Corporations.*

Borough auditors.

703. Only two of the three borough auditors are "elective auditors," the third, who is called "the mayor's auditor," being appointed by the mayor (*o*).

The electors are the burgesses (*p*), and the ordinary day of election is the 1st of March—this being, therefore, in the normal course of things, the last of the ordinary elections in point of time—

paper. Eleven councillors voted. Nine of the papers so used were not signed by the persons voting, and they were not personally delivered to the chairman, but were passed up to him in an irregular manner. These nine papers only contained the surnames or initials of the persons voted for; and none contained the place of abode or description of the candidates. The chairman declared four councillors duly elected. Two voting papers were missing after the election. None of the aldermen so elected made a declaration of acceptance of office. The court (Sir J. HANNEN and MATHEW, J.) granted a rule absolute for a mandamus directed to the mayor to hold an election of four aldermen.

(*e*) *Summers* v. *Moorhouse* (1884), 13 Q. B. D. 388. Evidence as to how the mistake came about may be properly held and considered on petition (*ibid.*).

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 60 (5).

(*g*) *Ibid.*, s. 60 (6).

(*h*) *Bridport Election Petition, Hounsell* v. *Suttill* (1887), 19 Q. B. D. 498.

(*i*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 60 (7).

(*k*) See p. 407, *post*.

(*l*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 5 (1).

(*m*) *Ibid.*, s. 5 (2).

(*n*) *Ibib.*, s. 8 (2).

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 25 (1).

(*p*) *Ibid.*

SECT. 2. Municipal.

or such other day as the council, with the approval of the Local Government Board, from time to time appoint (*q*).

An elector must not vote for more than one person to be elective auditor (*r*).

The election of elective auditors must be held at the town hall, or some other convenient place appointed by the mayor (*s*).

Save as above appears, the provisions previously set out with respect to the nomination and election of councillors for a borough not having wards apply to the nomination and election of elective auditors (*t*).

Subject to any exception to be allowed in circumstances to be set forth hereafter (*u*), no sum must be paid and no expense incurred for or on behalf of a candidate for the office of elective auditor, whether before, during, or after an election, in respect of or on account of the conduct or management of such election (*w*). Any candidate for this office, or agent of a candidate, who knowingly contravenes this provision will be guilty of an illegal practice (*x*), and if the offender be the candidate, or his agent, the election will be avoided thereby (*y*).

SUB-SECT. 6.—*Election of the Councillors of a County Council.*

County councillors.

704. The council of a county and the members thereof are elected in like manner as the council of a borough divided into wards, except as hereinafter appears (*z*).

The candidates—which expression is to be understood in the same sense as in the case of an election of councillors of a municipal corporation (*a*)—must be persons duly qualified by law (*b*). One county councillor only is to be elected for each electoral division (*c*).

A general election of county councillors occurs once in every three years. The county councillors are elected for a term of three years and then retire together, and their places are filled by a new election (*d*). The ordinary day of election of county councillors in each county is such day between the 1st and 8th days of March as the county council may fix, and if no date is so fixed is the 8th day of March (*e*). The ordinary day of election of councillors

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 62 (1).
(*r*) *Ibid.*, s. 62 (4).
(*s*) *Ibid.*, s. 62 (5).
(*t*) *Ibid.*, s. 62 (6).
(*u*) See p. 407, *post*.
(*w*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 5 (1).
(*x*) *Ibid.*, s. 5 (2).
(*y*) *Ibid.*, s. 8 (2).
(*z*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 2 (1).
(*a*) See p. 339, *ante*.
(*b*) See title LOCAL GOVERNMENT.
(*c*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 2 (2) (c). For electoral divisions, see p. 358, *post*.
(*d*) *Ibid.*, s. 2 (2) (d).
(*e*) County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 1 (1).

must be fixed by the county council not less than six weeks before the 8th day of March (*f*).

A bye-election takes place in the event of a casual vacancy exactly as in the case of a borough council (*g*), save that no election of a county councillor is held to fill a casual vacancy which occurs within six months before the ordinary day of retirement of county councillors (*h*)—except in the case of an electoral division which is co-extensive with or wholly comprised in a municipal borough.

Returning officer.

705. The returning officer for the election of county councillors is such person as the county council may appoint (*i*). The person appointed may, without prejudice to any other power, by writing under his hand appoint a fit person to be his deputy for all or any of the purposes relating to the election of any such councillor, and may by himself or such deputy exercise any powers and do any things which a returning officer is authorised or required to exercise or do in relation to such election; and for the purposes of the election he has all the powers of the sheriff (*k*). In applying the provisions of the law relating to municipal elections to cases of the election of county councillors a reference to the returning officer or to the mayor or the aldermen must, so far as relates to the election of any such councillor, be construed to refer to the returning officer and any such deputy as above mentioned (*l*); and similarly a reference to the town clerk, so far as respects the election of any such councillor, must be construed to refer to the returning officer or his deputy (*m*).

For the purposes of the election of county councillors for any electoral division which is co-extensive with or wholly comprised in a municipal borough the mayor of the borough or some person appointed by him, or, if the mayor is dead or absent or otherwise incapable of acting, an alderman appointed by the council of the borough, is the returning officer; and so far as respects such election he must follow the instructions of the county returning officer. The foregoing provisions, substituting the returning officer or his deputy for the town clerk, do not apply in such a case (*n*).

In the case of county council elections some place fixed by the returning officer is, except where the election is in a borough, to be substituted for the town clerk's office, and, as respects the hearing of objections to nomination papers, for the town hall; but such place must, if the electoral division is the whole or part of an urban

(*f*) County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 1 (4).
(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 40 (1).
(*h*) County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 1 (4). The day in question is 8th March in every third year (*ibid.*, s. 1).
(*i*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75 (2).
(*k*) *Ibid.*, s. 75 (3).
(*l*) *Ibid.*, s. 75 (4).
(*m*) *Ibid.*, s. 75 (5). As respects matters subsequent to the elections, a reference to the town clerk is to be construed to refer to the clerk of the county council.
(*n*) County Councils (Elections) Act, 1891 (54 & 55 Vict. c. 68), s. 3.

SECT. 2. Municipal.

district, be in that district, and in any other case must be in the electoral division or in an adjoining electoral division (*o*).

Use of room in school.

706. The returning officer may use free of charge for the purpose of taking the poll at such election any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is paid out of any local rate; but he must make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being so used. The returning officer may also use such rooms free of charge for hearing objections to nomination papers, and for counting votes (*p*).

Electoral division.

707. The divisions of the county for the purpose of the election of county councillors are called "electoral divisions," and not "wards" (*q*). The divisions are to be arranged with a view to the population of each division being so nearly as conveniently may be equal, regard being had to a proper representation both of the rural and of the urban population and to the distribution and pursuits of such population, and to area, and to the last published census for the time being, and to evidence of any considerable change of population since such census (*r*).

Electoral divisions must, so far as is reasonably practicable, be framed so that every division may be a county district or ward, or be comprised in one county district (*s*) or ward; but when an electoral district is a portion of a county district or ward, and such portion has not a defined area for which a separate list or part of a list of voters is made under the Acts relating to the registration of electors, such portion must, until a new register of electors is made, continue to be part of the district or ward of which it has been treated as being part in the then current register of electors (*t*).

Whenever under these provisions a county district is divided into two or more portions, every such portion must as far as possible consist of an entire parish or of a combination of entire parishes (*u*).

Freedom of election.

708. The law as to freedom of election and the prevention of corrupt and illegal practices is the same in the case of an election of county councillors as it is in the case of councillors of a borough; there is the same limit fixed to the number of persons who may be employed for payment, the same limit as to the amount of expense which may be incurred, and the same provision as to the return and declaration of election expenses (*w*).

(*o*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75 (7).
(*p*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 6; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75 (16) (g).
(*q*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 2 (2) (c).
(*r*) *Ibid.*, s. 51 (1).
(*s*) *I.e.*, an urban or rural sanitary district (*ibid.*, s. 100).
(*t*) *Ibid.*, s. 51 (2).
(*u*) *Ibid.*, s. 51 (3).
(*w*) See p. 346, *ante*.

The poll.

709. The poll (if any) commences at eight o'clock in the forenoon, and is kept open till eight o'clock in the afternoon of the same day, and no longer (*x*).

Although an elector may be registered in more than one electoral division (*y*), he can only vote in one of such divisions at a general election of county councillors (*z*); nor can he, unless it be in the administrative county of London (*a*), subscribe more than one nomination paper at a general election, because he cannot subscribe a nomination paper in or for more than one electoral division (*b*), and only one councillor, as above stated, can be elected for each electoral division (*c*).

It does not follow that the registration is without effect in any event, for there is nothing to prevent an elector at a series of bye-elections from using in each electoral division any franchise which he may possess, or from nominating a candidate at each such bye-election (*d*).

The return.

710. The returning officer must forthwith, after the election of county councillors for the county, return the names of the person elected to the clerk of the county council (*e*).

Save as hereinbefore appears, the law as to the election of county councillors is the same as that which applies to an election of the councillors of a borough (*f*).

SUB-SECT. 7.—*Election of the Chairman of a County Council.*

Election of chairman.

711. A county council consists of the chairman, aldermen, and councillors (*g*). After the election of councillors the next election in point of time to be held is that of the chairman (*h*). His term of office is one year (*i*); but, unless he is disqualified to hold the office, he is re-eligible on his ceasing to hold the office (*k*), though not before (*l*).

(*x*) Elections (Hours of Poll) Act, 1885 (48 & 49 Vict. c. 10); Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75 (11).

(*y*) See p. 235, *ante*.

(*z*) *Knill* v. *Towse* (1890), 24 Q. B. D. 697, C. A.

(*a*) See London Government Act, 1899 (62 & 63 Vict. c. 14).

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 51 (2), which, *mutatis mutandis*, applies to a county election, an "electoral division" taking the place of a "ward," as above shown.

(*c*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 2 (2) (e).

(*d*) See *Knill* v. *Towse* (1890), 24 Q. B. D. 697, C. A., and especially observe the words of FRY, L.J., as to voting more than once at the same election; see also note (*g*) on p. 370, *post*. It may be also that at a general election an elector on the register for two electoral divisions might subscribe a nomination paper for one electoral division and vote for another electoral division.

(*e*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75 (8).

(*f*) See pp. 339 *et seq.*, *ante*.

(*g*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 1.

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 61; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75.

(*i*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 15 (3); Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75.

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 37.

(*l*) *Hardwick* v. *Brown* (1873), L. R. 8 C. P. 406, 415; *Futcher* v. *Saunders* (1885), 49 J. P. 424.

SECT. 2. **Municipal.**

Election of chairman.

Save as hereinafter appears, the law relating to the election of the chairman is the same as that which governs the election of a mayor in a municipal corporation (*m*), but it is in terms provided that he is to be called "chairman" instead of "mayor" (*n*).

The electors are the same as in the case of an election of a mayor in a municipal corporation (*o*), except that an outgoing alderman must not vote as alderman in the election of a chairman of a county council (*p*). The 7th of November is the ordinary day of election (*q*).

Subject to any exception to be allowed in circumstances to be set forth hereafter (*r*), no sum must be paid and no expense must be incurred for or on behalf of a candidate for the position of chairman of a county council, whether before, during, or after the election, in respect of or on account of the conduct or management of such election (*s*). Any candidate for this office, or agent of a candidate, or person who knowingly acts in contravention of this provision, will be guilty of an illegal practice (*t*), and if the offender be the candidate, or his agent, the election will be avoided thereby (*u*).

The chairman has no power to appoint an alderman or councillor to act as deputy-chairman during his illness or absence (*x*). But the county council may from time to time appoint a member of the council to be vice-chairman, who will hold office during the term of office of the chairman (*a*), and, subject to any rules made from time to time by the county council, anything authorised or required to be done by, to, or before the chairman may be done by, to, or before such vice-chairman (*b*).

The vice-chairman, however, unlike the chairman, may be disqualified by absence (*c*).

A chairman elected to the office without his consent to his

(*m*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75. And the rule forbidding payments to be made or expenses incurred on behalf of his candidature is therefore applicable. See p. 353, *ante*.

(*n*) *Ibid.*, s. 2 (5) (a).

(*o*) *Ibid.*, s. 75.

(*p*) *Ibid.*, s. 75 (10).

(*q*) *Ibid.*, s. 75 (13).

(*r*) See p. 407, *post*.

(*s*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 5 (1). The law in this case is the same as in that of an election of a mayor.

(*t*) *Ibid.*, s. 5 (2).

(*u*) *Ibid.*, s. 8 (2).

(*x*) See Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 16, and Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75 (16) (b). A deputy-chairman may be appointed in the metropolis, but he is not appointed by the chairman.

(*a*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 2 (6).

(*b*) *Ibid.*

(*c*) *Expressio unius exclusio alterius.* See Broom's Legal Maxims (ed. 1900), p. 491. Note that the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75 (16) (c), does not refer to vice-chairman, but does refer to deputy-chairman, whose office exists only in the metropolis. It must be remembered in this connection that, as above indicated, s. 16 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), giving the mayor power to appoint a deputy-mayor in certain cases, does not apply to the chairman of a county council (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75 (16) (c)).

nomination being previously obtained is not liable to pay a fine on non-acceptance of office, nor is he disqualified by reason of absence (*d*).

SUB-SECT. 8.—*Election of County Aldermen.*

County aldermen.

712. In the case of a county council it is expressly enacted that the aldermen are to be called "county aldermen" (*e*). They are to be elected in like manner as the aldermen of the council of a borough divided into wards, subject as hereinafter appears (*f*).

Clerks in holy orders and other ministers of religion are not disqualified for being elected and being county aldermen (*g*). A peer owning property in the county is qualified to be a county alderman, and so is any person who is registered as a parliamentary voter in respect of the ownership of property, of whatsoever tenure, situate in the county (*h*).

A county alderman must not as such vote in the election of a county alderman (*i*).

The ordinary day of election of aldermen is the 7th of November (*k*), the election being held at the quarterly meeting of the council, immediately after that of the chairman (*l*).

In particular it is to be noted that, subject to any exception to be allowed in circumstances to be set forth hereafter (*m*), no sum must be paid and no expense must be incurred for or on behalf of a candidate for the office of county alderman, whether before, during, or after the election, in respect of or on account of the conduct or management (*n*) of the election. Any candidate for this office, or any agent of such a candidate, or any person, who knowingly acts in contravention of this provision, will be guilty of an illegal practice (*o*), and if the offender be the candidate, or his agent, the election will be avoided thereby (*p*).

SUB-SECT. 9.—*Election of the Councillors of an Urban District Council.*

(i.) *Preliminary.*

Ordinary election.

713. There is as a rule no general election of all the councillors of an urban district council at one time; but one-third as nearly as may be of the council, and, if the district is divided into wards, one-third as nearly as may be of the councillors of each ward, go out of office on the 15th day of April in each year, and their places must be filled by newly-elected councillors (*q*). But a county

(*d*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75 (16) (c). As to the law about acceptance of office, see title LOCAL GOVERNMENT.
(*e*) *Ibid.*, s. 2 (2) (c).
(*f*) *Ibid.*, s. 2 (1).
(*g*) *Ibid.*, s. 2 (2) (a). See also title LOCAL GOVERNMENT.
(*h*) *Ibid.*, s. 2 (2) (b).
(*i*) *Ibid.*, s. 2 (2) (c).
(*k*) *Ibid.*, s. 75 (13).
(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 60 (2), and Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75.
(*m*) See p. 407, *post*. And the rule forbidding payments to be made or expenses incurred on behalf of their candidature is therefore applicable. See p. 355, *ante*.
(*n*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 5 (1).
(*o*) *Ibid.*, s. 5 (2).
(*p*) *Ibid.*, s. 8 (2).
(*q*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 23 (6).

SECT. 2. Municipal.

council has power, on request made by a resolution of an urban district council passed by two-thirds of the members voting on the resolution, to direct that all the members of such council are to retire together on the 15th day of April in every third year (*r*).

The election which is held in either of the above cases is known as the "ordinary" election (*s*).

Casual vacancy.

In the case of casual vacancies occurring "bye-elections" take place as in the case of the other bodies previously discussed (*t*). But if any such casual vacancy occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs (*u*), it must be filled at the next ordinary election (*x*).

If any difficulty arises as to the election of any individual councillor and there is no provision for holding another election, the county council may order a new election to be held, and may give such directions as may be necessary for the purpose of holding the election (*a*).

The electors.

714. Where an urban district is not a borough the parochial electors of the parishes in the district are, as above shown (*b*), the electors of the councillors of the district, and if the district is divided into wards the electors of the councillors for each ward are such of the parochial electors as are registered in respect of qualifications within the ward (*c*). Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected (*d*).

The returning officer.

715. The conduct of the election of urban district councillors is subject to a body of laws specially enacted by statutory authority (*e*), which are different in many respects from the laws relating to the election of councillors of a borough and county councillors (*f*).

The clerk to the urban district council is the returning officer (*g*). If the clerk is unwilling to act as returning officer, or if the office of clerk is vacant at the time when any duty relative to the election has to be performed by the returning officer, or if the clerk from illness or other sufficient cause is unable to perform such duty, the

(*r*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 23 (6).
(*s*) See Urban District Councillors Election Order, 1898, Stat. R. & O. Rev., Vol. IV., District Council, England, p. 8, r. 33.
(*t*) See p. 340, *ante*.
(*u*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (4) (b).
(*x*) *Ibid.*
(*a*) *Ibid.*, s. 48 (5).
(*b*) See p. 191, *ante*.
(*c*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 23 (3).
(*d*) *Ibid.*, s. 23 (4).
(*e*) The election must, subject to the provisions of the Act, be conducted according to rules framed under the Act by the statutory authority, which is the Local Government Board (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 23 (5)). The other section of the Act referred to in this section is s. 48, the effect of which is given *post*.
(*f*) See pp. 362—375.
(*g*) Urban District Councillors Election Order, 1898, *supra*, r. 1 (1), made in accordance with the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 23 (5).

urban district council must appoint some other person to act as returning officer or to perform such of the duties of the returning officer as then remain to be performed, as the case may be (*h*). In any case other than those above mentioned, the returning officer is to be a person appointed by the county council (*i*). The returning officer must appoint an office for the purpose of the election (*k*). The returning officer may, in writing, appoint a fit person to be his deputy for all or any of the purposes relating to the election of urban district councillors. A deputy returning officer has all the powers, duties, and liabilities of the returning officer in relation to the matters in respect of which he is appointed as deputy (*l*).

Day of election.

716. The day of the election in the case of the ordinary election is the first Monday in April, or, if that is Easter Monday, the last Monday in March; or in either case such other day, not being earlier than the preceding Saturday or later than the following Wednesday, as may for special reasons be fixed by the county council (*m*).

The day of the election in the case of an election to fill casual vacancies, if not held at the time of the ordinary election, is such day as may be fixed by the clerk to the district council within one month after notice in writing of the vacancy has been given to the chairman of the district council or to the clerk by two councillors (*n*).

In any urban district the day of the election of urban district councillors and guardians must be the same (*o*).

Notice of election.

717. The date for notice of election in the case of an ordinary election is not later than the second Friday in March, or, if the first Monday in April is Easter Monday, the first Friday in March (*p*). The day for notice of election to fill casual vacancies, if not held at the time of the ordinary elections, is not later than fourteen days before the day of election (*q*).

Not later than the day so prescribed the returning officer must prepare and sign the notice, and must cause public notice to be given thereof in the district by posting it on or near the principal door of each church and chapel in the district and in some conspicuous place or places within the district (*r*). The notice must be in the prescribed form or to the like effect (*s*).

Expenses.

718. The expenses of the election—*i.e.*, the expenses incurred by the returning officer in conducting it—are not to exceed the scale fixed by the county council (*t*).

(*h*) Urban District Councillors Election Order, 1898, r. 1 (2).
(*i*) *Ibid.*, r. 1 (3).
(*k*) *Ibid.*, r. 1 (4).
(*l*) *Ibid.*, r. 1 (5).
(*m*) *Ibid.*, r. 2 (1), and Sched. I. (a).
(*n*) *Ibid.*, r. 2 (1), and Scheds. I. (b) and V.
(*o*) *Ibid.*, r. 2 (2).
(*p*) *Ibid.*, Sched. I. (a).
(*q*) *Ibid.*, Sched. I. (b).
(*r*) All prescribed notices are to be made public in this manner (*ibid.*, r. 30).
(*s*) *Ibid.*, r. 3.
(*t*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (7).

SECT. 2. Municipal.

Any sum which may be payable to the returning officer in respect of his services in the conduct of the election of urban district councillors, or in respect of expenses incurred in relation to the election, is to be defrayed by the urban district council out of the fund or rate applicable to their general expenses (*u*).

If polls for the election of urban district councillors and guardians are taken together, one half of any expenses which may be payable in respect of the two polls jointly, including the remuneration of any officers employed in the conduct thereof, is to be deemed to have been incurred in relation to the poll for the election of urban district councillors, and must be defrayed accordingly (*w*).

Law generally same as in election of county councillors.

Save as above mentioned, the law in relation to the proceedings and matters preliminary to the election is, *mutatis mutandis* (*x*), the same as in the case of county council elections (*a*).

Candidates.

The candidates must be persons duly authorised by law (*b*) to be such, and the expression "candidates" bears the same meaning as in the case of an election of county councillors (*c*).

Agents and workers.

719. In respect to the unpaid assistants, workers, and agents of a candidate the law is the same as in the case of county councils; but there is no law restricting the number of paid assistants, workers, or agents which it is permissible for a candidate in an election of urban district councillors to employ, nor the amount of money which it is permissible for such a candidate to expend in remunerating such paid assistants, helpers, or agents at such an election (*d*).

(ii.) *Nomination.*

Nomination papers.

720. Each candidate for election as an urban district councillor must be nominated in writing (*e*). The nomination paper must state the name of the district or ward for which the candidate is nominated, the surname and other name or names in full of the candidate and his place of abode and description, and whether he is qualified as a parochial elector of some parish within the district, or by having during the whole of the twelve months preceding the election resided in the district. It must be signed by two parochial electors of the district, or, if the district is divided into wards, of the ward, as proposer and seconder and no more, and must state their respective places of abode. It must be in the prescribed form or in a form to the like effect (*f*).

(*u*) Urban District Councillors Election Order, 1898, r. 28 (1).
(*w*) *Ibid.*, r. 28 (2).
(*x*) *Ibid.*, rr. 25 and 26.
(*a*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (3).
(*b*) See title LOCAL GOVERNMENT.
(*c*) See p. 356, *ante*.
(*d*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (3) (b). The result is that whereas a candidate for the position of county councillor may not spend any money in paying assistants even within the limits allowed to parliamentary candidates, a candidate for the position of district councillor may employ an unlimited number of persons and spend an unlimited amount of money.
(*e*) Urban District Councillors Election Order, 1898, r. 4 (1).
(*f*) *Ibid.*, r. 4 (2).

The name of more than one candidate must not be inserted in any one nomination paper (*g*).

A parochial elector must not sign more nomination papers than there are urban district councillors to be elected for the district or ward for which the election is to be held (*h*), and must not sign a nomination paper for the district, or for any ward, unless he is registered as a parochial elector in respect of a qualification therein (*i*). He must not sign nomination papers for more than one ward in the urban district (*k*).

If any parochial elector signs papers for more than one ward in the urban district, or signs a number of nomination papers larger than the number of urban district councillors to be elected for the district or ward, such of the nomination papers signed by him as relate to the first ward for which a nomination paper signed by him is received by the returning officer are alone valid, and of the nomination papers signed by him which relate to the district or to such ward, such as are first received by the returning officer up to the number of urban district councillors are alone valid. For this purpose nomination papers not properly filled up and signed are to be excluded (*l*).

The returning officer must provide nomination papers. Any parochial elector may obtain nomination papers from him free of charge (*m*).

Every nomination paper must be sent to the returning officer so that it will be received at his office not later than twelve o'clock at noon on the Thursday following the notice of election in the case of an ordinary election of urban district councillors and not later than twelve o'clock at noon on the fourth day after the day on which the notice of election was given in the case of an election to fill casual vacancies, if not held at the time of the ordinary election (*n*). A nomination paper received after the prescribed time is not valid (*o*). The returning officer must note on each nomination paper whether it was received before or after the time (*p*).

The returning officer must number the nomination papers in the order in which they are received by him, and the first valid nomination paper received for a candidate is to be deemed to be the nomination of that candidate (*q*).

Returning officer to determine validity of nominations.

721. The returning officer must as soon as practicable after the receipt of any nomination paper examine it and decide whether it has or has not been properly filled up and signed by two parochial electors of the district or ward and whether it is valid or invalid.

(*g*) Urban District Councillors Election Order, 1898, r. 4 (3).
(*h*) *Ibid.*, r. 4 (4).
(*i*) *Ibid.*
(*k*) *Ibid.* On the same principle that he must not vote for more than one ward, as explained note (*g*), p. 370, *post*.
(*l*) Urban District Councillors Election Order, 1898, r. 4 (5).
(*m*) *Ibid.*, r. 5.
(*n*) *Ibid.*, r. 6, and Sched. I.
(*o*) *Ibid.*, r. 6.
(*p*) *Ibid.*, r. 6.
(*q*) *Ibid.*, r. 7 (1).

SECT. 2. Municipal.

His decision that a nomination paper has been so filled up and signed and is not invalid is final, and cannot be questioned in any proceeding whatever (*r*). If he decides that a nomination paper is invalid, he must put a note on it to that effect, stating the grounds of his decision. He must also sign such note (*s*).

After deciding that the nomination of any candidate is valid or (except where a nomination of the candidate has been decided to be valid) that a nomination paper for any candidate is invalid, the returning officer must not later than the day after the last day for the receipt of the nomination papers (*t*) send by post or otherwise notice of his decision to the candidate (*a*).

Notice as to parties nominated.

722. The returning officer must make out a statement in the prescribed form, or in a form to the like effect, containing the names, places of abode, and descriptions of the persons nominated, and also containing a notice of his decision as regards each candidate as to whether he has been nominated by a valid nomination paper or not (*b*). This must be done in the case of an ordinary election not later than the Saturday following the Thursday fixed for the receipt of nomination papers, and in the case of elections to fill casual vacancies it must be done not later than the day after the last day for the receipt of nomination papers (*c*).

The returning officer must forthwith cause a copy of the statement to be suspended in the board room, if any, of the urban district council, and another to be affixed on the principal external gate or door of the offices of the district council. If there are no such offices he must cause such notice to be posted in some conspicuous place or places within the district (*d*).

Withdrawal of candidate.

723. Any candidate may withdraw his candidature by delivering or causing to be delivered at the office of the returning officer within the time prescribed for that purpose a notice in writing of such withdrawal signed by him (*e*). The prescribed time in the case of ordinary elections of urban district councillors is not later than twelve o'clock at noon on the Tuesday which follows the Thursday appointed for the receipt of nomination papers; in the case of elections to fill casual vacancies, if not held at the time of the ordinary election, the prescribed time is not later than twelve o'clock at noon on the fourth day after the last day for the receipt of nomination papers (*f*).

When election necessary.

724. If the number of candidates who receive valid nominations, and who do not withdraw their candidature by delivering the

(*r*) Urban District Councillors Election Order, 1898, r. 7 (2).
(*s*) *Ibid.*, r. 7 (3).
(*t*) *Ibid.*, r. 7 (4), Sched. I. In the case of ordinary elections this day will be the Friday following the day prescribed for the receipt of nomination papers (*ibid.*).
(*a*) *Ibid.*
(*b*) *Ibid.*, r. 8.
(*c*) *Ibid.*, Sched. I.
(*d*) *Ibid.*, r. 8.
(*e*) *Ibid.*, r. 9.
(*f*) *Ibid.*, Sched. I.

notice in writing above referred to, exceeds that of the persons to be elected, the councillors must be elected from amongst the persons nominated (*g*).

If the number of valid nominations does not exceed the number of councillors to be elected, or if by the withdrawal of any candidate as above provided the number of candidates for the district is reduced to a number not exceeding the number to be elected, or if the number of candidates is otherwise so reduced, the returning officer must, as early as practicable, give public notice in the district (*h*) to the effect that no poll will be taken, and that the candidates or the remaining candidates, as the case may be, will be declared to be elected; and also, in the case of the ordinary election, if the number of such candidates is less than the number of urban district councillors to be elected that such of any retiring councillors for the district as were highest on the poll at their election, or if the poll was equal or there was no poll, as shall have been selected for that purpose by the returning officer by lot to make up the required number, will be declared to be deemed to be re-elected (*i*).

When no valid nomination.

725. If there is no valid nomination the returning officer must, as early as practicable, give public notice in the district (*k*) that no poll will be taken, and, in the case of the ordinary election, that the retiring councillors will be declared to be deemed to be re-elected (*l*), and must forthwith send by post or otherwise a copy of any such notice to each of the persons who will be declared to be elected or to be deemed to be re-elected (*m*). The notice must be in the prescribed form appropriate to the case, or in a form to the like effect (*n*).

Misnomer etc. not to invalidate.

726. In place of any signature required to any of the above-mentioned documents it is sufficient for the signatory to affix his mark, if the same is witnessed by two parochial electors (*o*).

No misnomer or inaccurate description of any person or place named in any notice or nomination paper is to hinder the full operation of such notice or nomination paper with respect to that person or place, provided the description of that person or place is such as to be commonly understood (*p*). The law upon this point is therefore much less strict than in any of the elections previously considered (*a*).

Use of room.

727. The returning officer may use free of charge, for hearing objections to nomination papers, and for the purpose of taking the poll and for counting the votes, any room in a school receiving a

(*g*) Urban District Councillors Election Order, 1898, r. 10 (1). For the law as to the poll which will then take place, see p. 368, *post*.
(*h*) As to giving notice, see p. 366, *ante*.
(*i*) *Ibid.*, r. 10 (2).
(*k*) See p. 366, *ante*.
(*l*) *Ibid.*, r. 10 (3).
(*m*) *Ibid.*, r. 10 (4).
(*n*) *Ibid.*, r. 10 (5).
(*o*) *Ibid.*, r. 31.
(*p*) *Ibid.*, r. 32.
(*a*) See pp. 273, 342, *ante*.

SECT. 2. Municipal.

grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate; but he must make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being so used (*b*).

Law generally same as in election of county councillors.

728. Save as aforesaid, the law as to the relation of nomination to election is generally speaking *mutatis mutandis* (*c*) the same as in the case of an election of county councillors (*d*).

(iii.) *Freedom of Election and the Prevention of Corrupt and Illegal Practices.*

Corrupt and illegal practices.

729. The law as to freedom of election and the prevention of corrupt and illegal practices in the case of an election of urban district councillors is, *mutatis mutandis*, the same as in the case of the election of county councillors, except that the provisions which prohibit the payment of any sum and the incurring of any expense by or on behalf of a candidate at an election on account of or in respect of the conduct or management of the election (*e*) and those which relate to the time for sending in and paying claims (*f*) and those which relate to the maximum amount of election expenses (*g*), or the return or declaration respecting election expenses (*h*), do not apply to such an election (*i*).

(iv.) *The Poll.*

Must be by ballot.

730. The poll must be taken by ballot, and the greater part of the law relating thereto is, *mutatis mutandis* (*k*), the same as that which prevails in municipal elections proper (*l*).

(*b*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (3) (a); Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 6.

(*c*) Urban District Councillors Election Order, 1898, rr. 25, 26.

(*d*) See p. 356, *ante*.

(*e*) See p. 358, *ante*.

(*f*) See p. 358, *ante*.

(*g*) See p. 358, *ante*.

(*h*) See p. 358, *ante*.

(*i*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (3) (b); Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 37.

(*k*) The provisions of the Ballot Act, 1872 (35 & 36 Vict. c. 33), which, with adaptations and alterations are set out in Sched. III. to the Urban District Councillors Election Order, 1898, and only such provisions of that Act, apply, subject to such adaptations and alterations to the election of urban district councillors in like manner as in the case of a municipal election. Provided as follows: (a) such application is subject to the provisions of the order; (b) if polls are taken for the election of urban district councillors and guardians, one ballot may, if the returning officer thinks fit, be used for the two elections; but if separate ballot-boxes are used for the two elections respectively, no vote for any urban district councillor is to be rendered invalid by the ballot paper being placed in the box intended for the reception of ballot papers for guardians; (c) the ballot papers used at the election of urban district councillors must be of a different colour from that of any ballot papers used in the election of any guardians in the district when the polls for both elections are taken together (Urban District Councillors Election Order, 1898, r. 25).

(*l*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (3); and Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 6.

Time of poll.

731. The poll, if any, must be held on the day of election, as prescribed or defined above (*m*). The hours during which the poll is to be open will be such as may be fixed by the county council by any general or special order, or if no such order is in force in the district, then such hours as were applicable at the last ordinary election of urban district councillors or guardians; so, however, that the poll will always be open between the hours of six and eight in the evening (*n*).

In any urban district the hours during which any poll is to be open for the election of urban district councillors and guardians must be the same (*o*).

Combining election with that of guardians.

732. If the urban district or any ward or wards of the district is or are co-extensive with the parish or united parishes for which an election of guardians is to be held, or with any ward or wards of such a parish, or if the district is not divided into wards such district, or, if it is divided into wards, any one ward of the district, includes the whole of such parish, united parishes or ward of a parish, the poll for the election of urban district councillors for the district, and any poll for the election of guardians for the parish, united parishes, or ward, must be taken together (*p*).

If the county council is of opinion, in any other case, that the polls for the election of urban district councillors and for the election of guardians can conveniently be taken together, they may give directions accordingly to the returning officers for the two elections, and the polls for such elections must thereupon be taken together (*q*).

The returning officer for the election of urban district councillors must act as the deputy returning officer at any poll for the election of guardians, if the polls for the two elections are to be taken together (*r*).

A parish is, or where a parish is united with another parish for the election of guardians, the united parishes are, if wholly comprised in the urban district, to be a polling district (*s*), or to be sub-divided into polling districts for the election of urban district councillors, if a poll for the said elections and a poll for the election of guardians are to be taken together (*t*).

If any parish is divided into wards for the election of guardians, "ward" must be substituted for "parish" in the proposition just stated (*a*).

Polling districts.

733. If any parish, united parishes, or ward of a parish for the election of guardians is or are divided into polling districts

(*m*) Urban District Councillors Election Order, 1898, r. 11 (1). As to place for poll, see p. 367, *ante*.
(*n*) *Ibid.*
(*o*) *Ibid.*, r. 11 (2).
(*p*) *Ibid.*, r. 12 (1).
(*q*) *Ibid.*, r. 12 (2).
(*r*) *Ibid.*, r. 12 (3).
(*s*) For the meaning of the phrase "polling district," see p. 308, *ante*.
(*t*) Urban District Councillors Election Order, 1898, r. 13 (1) (a).
(*a*) *Ibid.*, r. 13 (1) (b).

SECT. 2. Municipal.

for the election of county councillors, the whole of each polling district being comprised in the parish, united parishes, or wards, and the lists of parochial electors are made out in separate parts for such polling districts, each district must, if a poll for the election of urban district councillors and a poll for the election of guardians is to be taken together, be a polling district for the election of urban district councillors (*b*).

Subject as aforesaid, the returning officer may, if he thinks fit, divide the district into polling districts for the election of urban district councillors, but each district must consist of an area for which a separate list of parochial electors will be available (*c*).

The polling districts for the election of urban district councillors, and of any guardians when the polls for the two elections are to be taken together, must be the same (*d*).

Where elector to vote.

734. If the district is divided into polling districts, each parochial elector must give his vote in the polling district in which the property in respect of which he is entitled to vote is situate, and if it is situate in more that one polling district he may vote in any one of the polling districts in which it is situate (*e*). But he must not vote in more than one such polling district (*f*). Thus, an elector who is on the register for several wards cannot, at an ordinary election of the whole urban district council, use all the votes which the register has given him; but in the case of a series of casual vacancies, giving rise to a series of bye-elections, he may use his votes for each ward as a casual vacancy for that ward occurs and gives rise to such bye-election (*g*). If the district is divided into wards for the election of urban district councillors, the

(*b*) Urban District Councillors Election Order, 1898, r. 13 (1) (c).
(*c*) *Ibid.*, r. 13 (1) (d).
(*d*) *Ibid.*, r. 13 (1) (e).
(*e*) *Ibid.*, r. 13 (2).
(*f*) *Ibid.*
(*g*) This rule contains a legislative enactment of the first importance, and limits the franchise which it might otherwise have been argued that the voter possesses. The registration laws have been careful to deprive the voter of more than one parliamentary vote or more than one parish council vote for the same parliamentary constituency or parish, as the case may be, the machinery for this purpose including the asterisks and other marks placed by the revising barrister against the names of voters to guard against any plurality of votes. No such machinery exists in the case under consideration. It might, indeed, have been argued that the rule now being discussed was *ultra vires;* but the case of *Knill* v. *Towse* (1890), 24 Q. B. D. 697, C. A., decided by Lord ESHER, M.R., and FRY and LOPES, L.JJ., which dealt with the like question when it arose in connection with county council elections, showed that the framers of the rule have rightly interpreted the law, and that the fact that no machinery exists to prevent the voter from having a plurality of votes as far as the register is concerned does not give the voter a right to vote more than once at an ordinary election for the same urban district. The reason for this will appear from the text. If any system of asterisks had been devised by which the voter was restricted to a franchise in any one parish, he could not have exercised his franchise in a series of bye-elections as he may now lawfully do. "I see no inconsistency in holding that though a person may be registered in several divisions he can only vote at the same election for one of those divisions" (*per* Lord ESHER, M.R., *ibid.*, at p. 701).

wards are for this purpose to be treated as districts (*h*), and an elector is not to be permitted to vote in more than one ward (*i*).

Polling places.

735. The returning officer must determine the number and situation of the polling places and polling stations (*k*). But his discretion in the matter is limited by three provisoes, namely: (i.) no premises licensed for the sale of intoxicating liquor are to be used as a polling station (*l*); (ii.) the polling stations for the election of urban district councillors and of any guardians, when the polls for the two elections are taken together, must be the same (*m*); (iii.) when the number of parochial electors in the urban district or (if the district is divided into polling districts) in any polling district is not more than five hundred, only one polling station must, unless the county council otherwise direct, be provided for the urban district or polling district, and so on for each additional five hundred parochial electors or for any less number of parochial electors over and above the last five hundred (*n*).

Notice of poll

736. If a poll has to be taken the returning officer must, within five clear days at least before the day of election, give public notice thereof (*o*). This notice must specify the day and hours fixed for the poll (*p*), the number of urban district councillors to be elected for the district (*q*), the names, place of abode and description of each candidate for the district whom he has decided to have been nominated by a valid nomination paper and who has not withdrawn his candidature (*r*), the names of the proposer and seconder who signed the nomination paper of each candidate (*s*), a description of the polling districts (if any) (*t*) and the situation and allotment of the polling places and polling stations, and the descriptions of the persons entitled to vote thereat (*a*). The notice must be in the prescribed form or to the like effect (*b*).

If polls are to be taken together in the district as to the election of both urban district councillors and guardians, the returning officer may, if he thinks fit, give one notice only for both polls, and such notice must be in the prescribed form or in a form to the like effect (*c*).

(*h*) The expenses which would be charged to any ward are in such case to be charged to the district (Urban District Councillors Election Order, 1898, r. 29 (1)).

(*i*) *Ibid.* The observations made in note (*g*) on p. 370, *ante*, apply equally to this case.

(*k*) *Ibid.*, r. 14. For the meaning of the phrases "polling places" and "polling stations," see pp. 308 *et seq.*, *ante*.

(*l*) *Ibid.*, r. 14 (a).

(*m*) *Ibid.*, r. 14 (b).

(*n*) *Ibid.*, r. 14 (c).

(*o*) *Ibid.*, rr. 15 (1), 30; see p. 235, *ante*.

(*p*) *Ibid.*, r. 15 (1) (a).

(*q*) *Ibid*, r. 15 (1) (b).

(*r*) *Ibid.*, r. 15 (1) (c).

(*s*) *Ibid.*, r. 15 (1) (d).

(*t*) *Ibid.*, r. 15 (1) (e).

(*a*) *Ibid.*, r. 15 (1) (f).

(*b*) *Ibid.*, r. 15 (2).

(*c*) *Ibid.*, r. 15 (3).

SECT. 2. Municipal.

Presiding officers.

737. The returning officer, or some person appointed by him for the purpose, must preside at each polling station. The person presiding at any polling station is to be called the presiding officer. But it is provided that at any polling station the same person is to act as presiding officer for the election of urban district councillors and guardians, the polls for which are to be taken together (*d*).

The returning officer must furnish every polling station with a sufficient number of compartments in which the voters can mark their votes screened from observation, and must furnish each presiding officer with such number of ballot papers as may be necessary for effectually taking the poll at the election (*e*).

Polling agents.

738. If there are only two candidates each of them may in writing appoint a polling agent for each polling station, who may be paid or unpaid (*f*). If there are more than two candidates, any number of them, being not less than one third of the whole number of candidates, may, in writing, appoint one polling agent for each polling station, who may be paid or unpaid (*g*). Any such appointment must be delivered at the office of the returning officer not less than two clear days before the day of the poll (*h*). Except as aforesaid, no polling agent, whether paid or unpaid, is to be appointed for the purposes of the election (*i*).

Questions to voters.

739. The presiding officer may, and if required by any parochial elector of the district or any duly appointed polling agent must, put to any elector at the time of his applying for a ballot paper, but not afterwards, the following questions or one of them, and no other: (i.) "Are you the person entered in the parochial register for the parish of —— [*or* for such and such a ward] as follows?" (*k*) (ii.) "Have you already voted at the present election of urban district councillors for the urban district council of —— [in this or any other ward (*l*)]?" (*m*).

A person required to answer either of these questions must not receive a ballot paper or be permitted to vote until he has answered it (*n*).

Ballot-boxes etc.

740. Any ballot-boxes, fittings, and compartments provided by or belonging to any public authority for any election (whether parliamentary, county council, municipal, or other) must on request, and if not required for immediate use by the said authority, be lent to the returning officer for an election of urban district councillors, upon such conditions and either free of charge or, except

(*d*) Urban District Councillors Election Order, 1898, r. 16.
(*e*) *Ibid.*, r. 17.
(*f*) *Ibid.*, r. 18.
(*g*) *Ibid.*
(*h*) *Ibid.*
(*i*) *Ibid.*
(*k*) *Ibid.*, r. 19 (1) (a). The whole entry from the register must be read to the voter.
(*l*) For the justification of this question in relation to an election of urban district councillors, see note (*g*), p. 370, *ante*.
(*m*) Urban District Councillors Election Order, 1898, r. 19 (1) (b).
(*n*) *Ibid.*, r. 19 (2).

in the prescribed cases, for such reasonable charge as may be prescribed (*o*).

Expenses.

741. The expenses of any election of urban district councillors must not exceed the scale fixed by the county council (*p*).

Save as above appears, the law relating to the poll at an election of urban district councillors is, *mutatis mutandis* (*q*), the same as that which obtains in an election of county councillors (*r*).

(v.) *Counting the Votes.*

Arrangements for counting.

742. The counting of the votes is conducted by the returning officer (*s*).

If the returning officer appoints a person to act as deputy returning officer for the district as regards the custody and opening of the ballot-boxes, the counting and recording of the votes, and the declaration of the number of votes given for each candidate, and of the election of the candidate or candidates to whom the largest number of votes has been given, the person so appointed has, in addition to his other powers and duties, all the powers and duties of the returning officer in relation to such matters and to the decision of any question as to any ballot paper and otherwise as to the ballot papers (*t*).

If polls for the election both of urban district councillors and guardians are taken together, the same person must discharge these duties in relation to both elections (*a*).

The votes must be counted in the district, or in some place near thereto, as soon as practicable after the close of the poll (*b*).

Casting vote etc.

743. If an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer or deputy returning officer may, if a parochial elector of the district, give such additional vote in writing, but he is not otherwise entitled to vote at the election (*c*). If the returning officer votes in a case in which he is not entitled to vote, there being no equality without his vote, and then votes a second time by way of exercising his casting vote, and declares the candidate for whom he has given such two votes to have been duly elected, that candidate will be unseated on petition (*d*). If in such a case the returning officer or deputy

(*o*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (6).

(*p*) *Ibid.*, s. 48 (7) By the same sub-section it was provided that "If at the beginning of one month before the first election under this Act a county council have not framed any such scale for their county, the Local Government Board may frame a scale for the county, and the scale so framed shall apply to the first election, and shall have effect as if it had been made by the county council, but shall not be alterable until after the first election."

(*q*) Urban District Councillors Election Order, 1898, rr. 25, 26.

(*r*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48.

(*s*) As to the free use of school-houses etc., for the purpose, see p. 367, *ante*.

(*t*) Urban District Councillors Election Order, 1898, r. 20 (1).

(*a*) *Ibid.*, r. 20 (2).

(*b*) *Ibid.*, r. 20 (3).

(*c*) *Ibid.*, r. 21.

(*d*) *Brittain* v. *Ritchie* (1899), 43 Sol. Jo. 532. This case was decided

SECT. 2. Municipal.

returning officer, as the case may be, is not a parochial elector of the district, or is unwilling to vote, he must determine by lot which of the candidates whose votes are equal is to be elected (*e*).

Casual vacancies.

744. In the event of one or more casual vacancies being filled up at the ordinary election, where there is a poll, the persons elected by the fewest votes are to be deemed elected to fill such vacancies. Should there be an equality of votes between such persons the urban district council must determine by ballot which of such persons is or are to be deemed elected to fill the casual vacancy or vacancies. If the persons elected to fill the casual vacancies will hold office for different periods, the person elected by the fewest votes, or if the votes are equal the persons selected by the urban district council by ballot from the persons so elected, are to hold office for the shorter period. Where there is no poll the person or persons to be deemed to be elected to fill the casual vacancy or vacancies are to be determined by the urban district council by ballot (*f*).

Subject as aforesaid, the law as to counting at an election of urban district councillors is, *mutatis mutandis* (*g*), the same as that relating to an election of county councillors (*h*).

(vi.) *Declaration of the Result.*

Publishing the result.

745. The declaration of the result of the poll is to be in the prescribed form or in a form to the like effect (*i*).

The returning officer or deputy returning officer, as the case may be, making the declaration, must forthwith cause a copy of it to be affixed on the front of the building in which the votes have been counted. If the declaration is made by a deputy returning officer he must forthwith send it to the returning officer (*k*).

The returning officer must prepare and sign a notice of the result of the election in the district, or in all the wards of the district, as the case may be, and must by such notice declare to be elected or to be deemed to be re-elected the persons who, under the rule regulating the relation of nomination to election, are to be

specifically upon the words of the rule in question, and the decision gave rise to a subsequent action in which the successful petitioner sued the defaulting returning officer under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 75, for "refusing to conduct and declare the election as required by the Act." LAWRANCE, J., gave judgment for the plaintiff for £100, being the maximum amount of the "fine recoverable by action" spoken of in that section. He did not decide whether he would have held the defendant liable in an action at common law within the principle of *Pickering* v. *James* (1873), L. R. 8 C. P. 489. The defendant was not held liable to forfeit the additional penal sum of £100 spoken of in the Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 11, because he was not guilty of any wilful misfeasance, or any wilful act or omission in contravention of the Act (*Brittain* v. *Whitehorn* (1900), *Times*, March 30).

(*e*) Urban District Councillors Election Order, 1898, r. 21.
(*f*) *Ibid.*, r. 22.
(*g*) *Ibid.*, rr. 25, 26.
(*h*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48.
(*i*) Urban District Councillors Election Order, 1898, r. 23 (1).
(*k*) *Ibid.*, r. 23 (2).

declared to be elected or to be deemed to be re-elected without a poll being taken. The notice is to be in the prescribed form or in a form to the like effect (*l*).

The returning officer must cause a copy of the notice to be suspended in the board room, if any, of the urban district council, and he must also cause public notice thereof to be given. The returning officer must also send copies of the notice to the persons elected or deemed to be re-elected (*m*).

Except as above appears, the law on this subject is, *mutatis mutandis* (*n*), the same as in an election of county councillors (*o*).

SUB-SECT. 10.—*Election of the Chairman of an Urban District Council.*

Method of election.

746. Every urban district council must from time to time at their annual meeting (which is to be held as soon as may be convenient after 15th April in each year) either appoint one of their own number or elect some other person from outside their own number to be chairman for one year at all meetings at which he is present (*p*). This election cannot be conducted by ballot, for the names of the members present at the meeting, as well as of those voting, must be recorded so as to show whether each vote given was in favour of a particular candidate or against him (*q*).

There must be at least one-third of the full number of members present at the meeting, subject to this qualification, that in no case is a larger quorum than seven members to be required (*r*).

The election is to be decided by a majority of votes of the members present and voting on the matter (*s*). In case of an equal division of votes the chairman has a second or casting vote (*t*).

Vacancy in office etc.

747. If the chairman so appointed dies, resigns, or becomes incapable of acting, another person is to be appointed chairman for the period during which the person so dying, resigning, or becoming incapable would have been entitled to continue in office, and no longer (*u*). If the chairman is absent from any meeting at the time appointed for holding the same, the members present must appoint one of their number to act as chairman thereat (*v*).

Paid agents etc.

There is no law restricting the number of paid assistants, workers, and agents which it is permissible for a candidate for the office of chairman of an urban district council to employ, nor the amount of

(*l*) Urban District Councillors Election Order, 1898, r. 24 (1).
(*m*) *Ibid.*, r. 24 (2). As to publication of notice, see r. 30.
(*n*) *Ibid.*, rr. 25, 26.
(*o*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48.
(*p*) *Ibid.*, s. 59 (1); Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 199, and Sched. I., r. 3.
(*q*) Public Health Act, 1875 (38 & 39 Vict. c. 55), Sched. I., r. 6.
(*r*) *Ibid.*, r. 2.
(*s*) *Ibid.*, r. 7.
(*t*) *Ibid.*, r. 8. The law as to the casting vote is quite different from that which prevails in the case of an election of councillors; see p. 373, *ante*.
(*u*) *Ibid.*, r. 4.
(*v*) *Ibid.*, r. 5.

SECT. 2. Municipal.

money which it is permissible for such a candidate to expend in remunerating such paid assistants, workers, and agents (*x*).

Vice-chairman.

748. Any urban district council other than a borough council may, if they think fit, appoint a vice-chairman to hold office during the term of office of the chairman, and the vice-chairman will in the absence, or during the inability, of the chairman have the powers and authority of the chairman (*y*). There is no power to appoint a vice-chairman from outside, as may be done in the case of a board of guardians (*z*).

Conduct of business.

749. The council from time to time make their own regulations with respect to the summoning, notice, place, management, and adjournment of their meetings and with respect to the transaction and management of their business (*a*). These regulations must be duly observed, or the election may be avoided by reason of the irregularity (*b*).

SUB-SECT. 11.—*Election of Councillors of a Rural District Council.*

(i.) *Preliminary.*

Method of election.

750. Ordinary elections and bye-elections of rural district councillors take place in the same circumstances as those of urban district councillors, their term of office and its conditions being, *mutatis mutandis*, the same (*c*). The candidates must be persons duly qualified by law (*d*), and the expression "candidate" bears the same meaning as in an election of the councillors of a municipal corporation (*e*).

Except as hereinafter appears, the conduct of the election is also, *mutatis mutandis*, subject to the same laws (*f*).

(*x*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (3) (b), contrast this with the case of a candidate for the office of chairman of a county council, who may not spend any money whatsoever on his election; see p. 360, *ante*.

(*y*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 59 (2).

(*z*) See p. 393, *post*.

(*a*) Public Health Act, 1875 (38 & 39 Vict. c. 55), Sched. I., r. 1.

(*b*) *Dobson* v. *Fussy* (1831), 7 Bing. 305. This is not an election case, but it is cited to show the result of irregularity with regard to such matters as notices of meetings etc. In justification of an assault the defendants pleaded that they were "duly assembled" as a select vestry, and "extruded" the plaintiff, who was an intruder, and not a select vestryman at all. The plaintiff showed that one Dibbs, who was a select vestryman, had not received due notice of the meeting in question; and by reason of this irregularity the justification of the assault upon the plaintiff was held to have failed. It seems clear that *à fortiori* an election of chairman held in similar circumstances would be avoided.

(*c*) Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 20, 24 (4).

(*d*) See title LOCAL GOVERNMENT.

(*e*) See p. 339, *ante*.

(*f*) See Rural District Councillors Election Order, 1898, Stat. R. & O. Rev., Vol. IV., District Council, England, p. 46, applicable to the case of rural district councillors. All the rules of that order not referred to in this sub-section are substantially the same as those given above, pp. 361—375, *ante*, in dealing with the election of urban district councillors. The sections which are cited in the present sub-section refer to those matters which necessarily had to be separately dealt with in considering the election of a different body.

751. The election takes place in each parish within the district, a different returning officer officiating in each parish (*g*).

Returning officer.

The clerk to the rural district council of the rural district in which the parish is situate or with which it is co-extensive is to be the returning officer, or if there is more than one such clerk, then the person who acts as such clerk for the purposes of public health (*h*). If the clerk is unwilling to act as returning officer, or if the office of clerk is vacant at the time when any duty relative to the election has to be performed by the returning officer, or if the clerk from illness or other sufficient cause is unable to perform such duty, the rural district council must appoint some other person to act as returning officer or to perform such of the duties of the returning officer as then remain to be performed as the case may be, but the same person must in all cases be the returning officer at the election of the rural district councillors and of any parish councillors to be elected at the same date in the parish (*i*).

The returning officer must appoint some place within the union or rural district in which the parish is situate as an office for the purpose of the election (*k*).

The returning officer may, in writing, appoint a fit person to be his deputy for all or any of the purposes relating to the election, and he must appoint such a deputy in the case and for the purposes of counting and recording the votes. A deputy returning officer has all the powers, duties, and liabilities of the returning officer in relation to the matters in respect of which he is appointed as deputy (*l*).

The same person is to act as deputy returning officer in respect of the election both of rural district councillors and of any parish councillors to be elected at the same date in the parish (*m*).

Day of election.

752. The day of the election is in the case of the ordinary election of rural district councillors in any year to be the first Monday in April, or if that is Easter Monday, the last Monday in March; or in either case, such other day, not being earlier than the preceding Saturday or later than the following Wednesday, as may for special reasons be fixed by the county council. At elections to fill casual vacancies, if not held at the time of the ordinary elections, the day of election is to be such day as may be fixed by the clerk to the district council in the manner prescribed for the case of urban district councillors (*n*).

The day of election of rural district councillors in the parish and

(*g*) This is to be inferred from what follows.

(*h*) Rural District Councillors Election Order, 1898, r. 1 (1). The reference is to the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 190, by which officers of rural authorities are appointed for purposes relating to public health, with an option to the clerk of the union to take over additional duties in this connection or to leave such duties to an assistant to be appointed *ad hoc*.

(*i*) Rural District Councillors Election Order, 1898, r. 1 (2).

(*k*) *Ibid.*, r. 1 (3).

(*l*) *Ibid.*, r. 1 (4).

(*m*) *Ibid.*, r. 1 (5).

(*n*) *Ibid.*, r. 2 (1), and Sched. I.

SECT. 2. Municipal.

the day of election of any parish councillors to be elected on the same date in the parish is to be the same (*o*).

Arrangements for combining election with that of parish councillors.

753. If the parish is divided into polling districts for the election of county councillors or of parish councillors, the whole of each such district being comprised in the parish, and the lists of parochial electors are made out in separate parts for such districts, each district will be a polling district for the election of rural district councillors (*p*). If the parish is not so divided, but is divided into wards for the election of parish councillors, each ward will be a polling district for the election of rural district councillors (*q*).

If neither of the above-stated conditions applies to the parish, the returning officer may, if he thinks fit, divide the parish into polling districts for the election of rural district councillors, but each district must consist of an area for which a separate list of parochial electors will be available; but it is provided that the parish must not be divided into polling districts if the population thereof, according to the census last published, is not three hundred or upwards (*r*).

The polling districts for the election of rural district councillors and of any parish councillors to be elected at the same date in the parish must be the same (*s*).

(ii.) *Nomination.*

Nomination papers.

754. The nomination paper must state the name of the parish or other area for which the candidate is nominated, the surname or other name or names in full of the candidate, and his place of abode and description, and whether he is qualified as a parochial elector of some parish within the poor law union in which the rural district or the part of the rural district containing the parish or other area is comprised, or by having during the whole of the twelve months preceding the election resided in the union, or by being qualified to be a councillor for a borough wholly or partly situate within the union. It must be signed by two parochial electors of the parish or other area, as proposer and seconder, and no more, and must state their respective places of abode. It must be in the prescribed form or in a form to the like effect (*t*).

Notice of nominations.

755. Not later than the Saturday after the day of election in the case of an ordinary election, and not later than the day after the last day for the receipt of nomination papers in the case of an election to fill casual vacancies, the returning officer must make out a statement

(*o*) Rural District Councillors Election Order, 1898, r. 2 (2).
(*p*) *Ibid.*, r. 12 (1) (a).
(*q*) *Ibid.*, r. 12 (1) (b).
(*r*) *Ibid.*, r. 12 (1) (c).
(*s*) *Ibid.*, r. 12 (1) (d). Save as above appears, the law as to all preliminary matters is the same as in the case of the election of urban district councillors and the rules of the Urban District Councillors Election Order, 1898 (see pp. 361—364, *ante*), apply, *mutatis mutandis*, to the case, though the numbering of the rules is slightly different.
(*t*) Rural District Councillors Election Order, 1898, r. 4 (2). A nomination paper at an election of rural district councillors is not invalid by reason of its having been signed by the proposer and seconder before the name of the candidate was filled in (*Cox* v. *Davies*, [1898] 2 Q. B. 202).

in the prescribed form, or in a form to the like effect, containing the names, places of abode, and descriptions of the persons nominated as rural district councillors for the parish or the several parishes for which the election is to be held, and also containing a notice of his decision as regards each candidate as to whether he has been nominated by a valid nomination paper or not. He must forthwith cause a copy thereof to be suspended in the board room of the guardians of the poor law union in which any of those parishes are situate, and another to be fixed on the principal external gate or door of every workhouse of such union, and if the board room of the guardians is not situate at any such workhouse, on the external gate or door of the building in which the board room is comprised (*a*).

(iii.) *The Poll.*

Voting in polling districts.

756. If the parish is divided into polling districts, each parochial elector must give his vote in the polling district in which the property in respect of which he is entitled to vote is situate, and if it is situate in more than one polling district, he may vote in any one (but in one only) of the polling districts in which it is situate (*b*). If the parish is divided into wards for the election of rural district councillors the above rules, except as otherwise provided, apply to each of such wards as if it were a parish. But it is provided that, if the parish is so divided, an elector is not permitted to vote in more than one ward, and that any sum chargeable to any ward must be charged to the parish in which the ward is situate and must be raised accordingly (*c*).

Presiding officers.

757. The returning officer, or some person appointed by him for the purpose, must preside at each polling station. The person presiding at any polling station is to be called the presiding officer. But it is provided that at any polling station the same person is to act as presiding officer for the election of rural district councillors and of any parish councillors to be elected at the same date in the parish, and that in making appointments under this rule the returning officer must, as far as practicable, secure the services of suitable persons resident in the parish, so as to diminish expense (*d*).

Ballot-boxes etc.

758. If an election of rural district councillors and of any parish councillors is held in the parish at the same date, one ballot-box may, if the returning officer thinks fit, be used for the two elections; but if separate ballot-boxes are used for the two elections

(*a*) Rural District Councillors Election Order, 1898, r. 8. Save as above appears, the law as to nomination is the same as in the case of the election of urban district councillors, and the rules of the Urban District Councillors Election Order, 1898 (see pp. 364—368, *ante*), apply, *mutatis, mutandis* to the case, though the numbering of the rules is slightly different. The dates of the different proceedings are arranged in a table based upon the same principle as obtains in the Urban District Councillors Election Order, which will be found in Sched. I. of the Rural District Councillors Election Order, 1898.

(*b*) Rural District Councillors Election Order, 1898, r. 12 (2). See note (*g*), p. 370, *ante*.

(*c*) *Ibid.*, r. 29. See note (*g*), p. 370, *ante*.

(*d*) *Ibid.*, r. 15.

SECT. 2. Municipal.

respectively, no vote for any rural councillor is to be rendered invalid by the ballot paper being placed in the box intended for the reception of ballot papers for parish councillors (*e*).

The ballot papers used at the election of rural district councillors for the parish must be of a different colour from that of any ballot papers used in the election of parish councillors held in the parish at the same date (*f*).

Expenses.

759. Any sum which may be payable to the returning officer in respect of his services in taking a poll in the parish, or in respect of expenses incurred in relation to such poll, must be defrayed by the rural district council of the district, and must be charged to the parish in their accounts, and must be raised in like manner as any sums payable by the parish in respect of the general expenses of the rural district council (*g*).

Any other sum which may be payable to the returning officer in respect of his services in the conduct of the election, or in respect of expenses incurred in relation to the election, must be defrayed by the rural district council of the district, and must be charged in their accounts as follows: (i.) if the election is the ordinary election, as general expenses; and (ii.) in case of any such election not held at the time of the ordinary election, to the parish; in which case any such sum is to be raised in like manner as any sums payable by the parish, in respect of the general expenses of the rural district council: provided that where any such sum is payable in respect of two or more parishes, the same is to be apportioned between them according to the number of parochial electors registered in such parishes respectively (*h*).

If a poll for the election of rural district councillors and of any parish councillors is taken at the same date in the parish, one half of any expenses which may be payable in respect of the two polls jointly, including the remuneration of any officers employed in the conduct thereof, is to be deemed to have been incurred in relation to the poll for the election of rural district councillors, and is to be defrayed accordingly (*i*).

Parish in adjoining counties.

760. If the parish is situate in more than one administrative county, it will for the purposes of the election be deemed to be wholly situate in the county which according to the census last published contains the larger part of the population (*j*).

Questions to electors.

761. If the parish is united with any other parish for the election of rural district councillors, the questions which the presiding officer

(*e*) Rural District Councillors Election Order, 1898, r. 24 (b).
(*f*) *Ibid.*, r. 24 (c).
(*g*) *Ibid.*, r. 27 (1).
(*h*) *Ibid.*, r. 27 (2).
(*i*) *Ibid.*, r. 27 (3). If the parish is united with any other parish for the election of rural district councillors, the parishes must be regarded as forming the parish (*ibid.*, r. 30 (1)), but any sum which would be charged to the united parishes must be divided between them in proportion to the number of parochial electors registered in such parishes respectively, and are to be raised accordingly (*ibid.*, r. 30 (3)).
(*j*) *Ibid.*, r. 28.

may, and if required by any parochial elector or any polling agent must, put to any elector shall be as follows: "Are you the person entered in the parochial register for one of the united parishes, namely, the parish of —— as follows [*read the whole entry from the register*]?" "Have you already voted at the present election of rural district councillors in either of such united parishes, or in any other parish or ward in the rural district of ——?" (*k*).

(iv.) *Counting the Votes.*

Arrangements for the counting.

762. The returning officer, when he does not act as a presiding officer at any polling station for the parish, must appoint the presiding officer, or some one of the presiding officers, to act as deputy returning officer for the parish, as regards the custody and opening of the ballot-boxes, the counting and recording of the votes, and the declaration of the number of votes given for each candidate and of the election of the candidate or candidates to whom the largest number of votes has been given. The person so appointed will, in addition to his other powers and duties, have all the powers and duties of the returning officer in relation to the decision of any question as to any ballot paper and otherwise as to the ballot papers. If the parish is divided into wards for the election either of rural district councillors or of parish councillors, but not for both elections, or if the parish is so divided for both elections and the wards are not the same for both elections, one deputy returning officer must act for this purpose for the whole of the parish (*l*).

(v.) *Declaration of the Result.*

Notice of result.

763. The returning officer must prepare and sign in duplicate a notice of the result of the elections in all the parishes in the district for which elections are held, and must by such notice declare to be elected or to be deemed to be re-elected the persons who are to be declared to be elected or to be deemed to be re-elected without a poll being taken. The notice must be in the prescribed form or in a form to the like effect (*m*). One of these notices must be sent by the returning officer, as early as practicable, to the clerk of the rural district council and the other to the clerk to the guardians of the union comprising the rural district or the part of a rural district, and copies of the notice are to be sent by the returning officer to the persons elected or deemed to be re-elected (*n*).

(*k*) Rural District Councillors Election Order, 1898, r. 30 (2). Save as above appears, the law as to the poll is the same as in the case of urban district councillors, and the Urban District Councillors Election Order, 1898 (see pp. 368—373, *ante*), applies, *mutatis mutandis*, to the case, though the numbering of the rules is slightly different.

(*l*) Rural District Councillors Election Order, 1898, r. 19 (1). Save as above appears, the law as to the counting of the votes is the same as in the case of urban district councillors, and the rules of the Urban District Councillors Election Order, 1898 (see pp. 373, 374, *ante*), apply *mutatis mutandis*, though the numbering of the rules is slightly different.

(*m*) Rural District Councillors Election Order, 1898, r. 23 (1), and Sched. II. For meaning of "deemed to be elected," see p. 367, *ante*.

(*n*) *Ibid.*, r. 23 (2).

SECT. 2. Municipal.

The returning officer must also send a sufficient number of copies of the notices to the overseers of all the parishes in the rural district for which elections are held, and the overseers of any such parish must cause public notice to be given thereof by posting the same on or near the principal door of each church and chapel in the parish and in some conspicuous place or places within the parish (*o*).

SUB-SECT. 12.—*Election of the Chairman and Vice-Chairman of a Rural District Council.*

Chairman and vice-chairman.

764. The law as to the election of the chairman and vice-chairman of a rural district council is the same as in the case of the chairman and vice-chairman of an urban district council (*p*).

SUB-SECT. 13.—*Election of the Councillors of a Parish Council.*

(i.) *Preliminary.*

Only one annual election.

765. There are no "bye-elections" by the electors generally in the case of councillors of a parish council, all casual vacancies among parish councillors being filled from time to time as they arise by the council itself (*q*). There is, therefore, only one annual election of the councillors of a parish council to be considered, which takes place at a parish meeting or at a poll consequent thereon (*r*). The candidates must be persons duly qualified by law (*s*), and the expression "candidate" bears the same meaning as in an election of the councillors of a municipal corporation (*t*).

Returning officer.

766. The office of returning officer is held by the same person who holds the office in the case of an election of rural district councillors (*u*). But in the case of a parish council election the clerk of the rural district council or the acting clerk must as early as practicable give notice to the clerk of the parish council, or, if there is no such clerk to the overseers of the parish, as to whether he himself will act as returning officer or whether some other person has been appointed, and, if so, as to the name of such person (*x*).

But here the returning officer has not in all cases quite the same responsibility as in the elections hitherto considered, because all questions relating to the nomination of candidates for the office of parish councillors are decided at the parish meeting without his

(*o*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 59. The vice-chairman must not be elected from outside the council, as may be done in the case of a board of guardians; see p. 393, *post*.

(*p*) Rural District Councillors Election Order, 1898, r. 23 (3). Save as above stated, the law as to the declaration of the result is the same as in the case of urban district councillors, and the rules of the Urban District Councillors Election Order, 1898 (see pp. 368—373, *ante*), apply *mutatis mutandis*, though the numbering of the rules is slightly different.

(*q*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 47 (4).

(*r*) *Ibid.*, s. 48 (1).

(*s*) See title LOCAL GOVERNMENT.

(*t*) See p. 339, *ante*.

(*u*) See pp. 377 *et seq.*, *ante*.

(*x*) Parish Councillors Election Order, 1901, Stat. R. & O. Rev., Vol. IX., Parish Council and Parish Meeting, England, p. 77, r. 20 (3). The rest of r. 20 of this order, providing as to who is to be the returning officer, is the same as the Rural District Councillors Election Order, 1898, r. 1.

assistance, as will be presently described, and even contested elections are often similarly dealt with. But the returning officer must hold a poll, when a poll is demanded, for the election of parish councillors under circumstances presently to be stated (*a*).

Parish meeting.

767. The parish meeting for the ordinary election of parish councillors must be held on the first Monday after the 10th of March, or if the first Monday in April is Easter Monday, the first Monday after the 3rd of March, or in either case such other day, not being earlier than the preceding Saturday or later than the following Wednesday, as may for special reasons be fixed by the county council (*b*).

The meeting must be held at such an hour, not being earlier than six o'clock in the evening, as may be fixed by the chairman of the parish council (*c*).

Notice of meeting.

768. The chairman of the parish council must sign and publish public notice of the parish meeting by posting the same on or near the principal door of each church and chapel in the parish, and in some conspicuous place or places within the parish (*d*), not less than seven clear days before the day for the meeting, and such notice must be in the prescribed form or in a form to the like effect (*e*).

If the chairman of the parish council from illness or other sufficient cause is unable to discharge these duties they must be discharged by the clerk to the parish council, or if there is no such clerk by the overseers of the parish (*f*).

(ii.) *Nomination of the Candidates and other Proceedings relating to the Election at the Parish Meeting.*

Nomination papers.

769. The returning officer must provide nomination papers and must furnish the clerk to the parish council, or if there is no such clerk the overseers, with a supply thereof. Any parochial elector may obtain nomination papers from either the returning officer or from the clerk to the parish council or the overseers, as the case may be, free of charge (*g*).

The nomination paper must state the surname and the other name or names in full of the candidate, and whether he is qualified as a parochial elector or by residence. It must be signed by two parochial electors of the parish, or, if the parish is divided into wards, of the ward, as proposer and seconder, and no more, and must state their respective places of abode. It must be in the prescribed form or in a form to the like effect (*h*).

The name of more than one candidate must not be inserted in any one nomination paper (*i*).

(*a*) See pp. 386 *et seq.*, *post*.
(*b*) Parish Councillors Election Order, 1901, r. 1 (1).
(*c*) *Ibid.*, r. 1 (2).
(*d*) *Ibid.*, r. 41.
(*e*) *Ibid.*, r. 2.
(*f*) *Ibid.*, r. 3.
(*g*) *Ibid.*, r. 4.
(*h*) *Ibid.*, r. 5 (2).
(*i*) *Ibid.*, r. 5 (3).

SECT. 2. Municipal.

Any parochial elector of the parish may sign as many nomination papers as the number of parish councillors to be elected, but no more. But if the parish is divided into wards for the election of parish councillors, a parochial elector must not sign nomination papers for more than one ward, and must not sign a larger number of nomination papers than the number of parish councillors to be elected for the ward (*k*).

If any parochial elector signs a larger number of nomination papers than the number of parish councillors to be elected for the parish or ward, such of the nomination papers signed by him as are first received by the chairman of the meeting up to the number of parish councillors to be so elected are alone to be valid (*l*).

Handing in papers.

770. The chairman must ask at the meeting that nomination papers be handed in to him, and they must be handed in accordingly. He must number them in the order in which they are received by him; and the first valid nomination paper received by him for a candidate is to be deemed to be the nomination of that candidate (*m*).

If the chairman is nominated for election and he does not forthwith withdraw his candidature, he must call upon the meeting to elect some other person as chairman. The meeting must forthwith proceed to elect some other person as chairman of the meeting, and as soon as such other person is elected he will become chairman of the meeting, and the original chairman must vacate the chair (*n*).

When it appears to the chairman that all the nomination papers have been handed in, and not less than fifteen minutes have elapsed since he took the chair, he must state to the meeting the names of the candidates in the alphabetical order of their surnames, and also their places of abode and descriptions, and the names and places of abode of their proposers and seconders. Before making such statement the chairman must, as regards each candidate, decide whether he has been nominated by a valid nomination paper (*o*).

After such statement has been made, no other nomination papers are to be received, except in the event of withdrawals of candidates presently to be mentioned and in the circumstances to be stated in that connection (*p*).

The decision of the chairman that a nomination paper is valid—that is to say, that it has been properly filled up and signed by two parochial electors—is final, and cannot be questioned in any proceeding whatever (*q*). If the chairman decides that a nomination paper is invalid he must forthwith put a note on the nomination paper to this effect, stating the grounds of his decision, and must sign such note and state the effect of it to the meeting (*r*).

(*k*) Parish Councillors Election Order, 1901, r. 5 (4).
(*l*) *Ibid.*, r. 5 (5). Compare *Burgoyne* v. *Collins* (1882), 8 Q. B. D. 450, for the principle of this rule.
(*m*) *Ibid.*, r. 6.
(*n*) *Ibid.*, r. 7.
(*o*) *Ibid.*, r. 8 (1).
(*p*) *Ibid.*
(*q*) *Ibid.*
(*r*) *Ibid.*, r. 8 (2).

After making the statement as to the candidates, their proposers and their seconders above referred to, the chairman must give opportunity for putting questions to such of the candidates as have been duly nominated and are present at the meeting, and for receiving explanations from them (*s*).

Withdrawal of candidates.

771. Before the names of the candidates are put to the meeting, or if under circumstances presently to be stated the names are not required to be put to the meeting, before the chairman declares the names of the candidates elected any candidate may withdraw his candidature (*t*). Any such withdrawal must be in writing signed by the candidate, and must be handed to the chairman; or if the candidate is present at the meeting he may, by word of mouth, declare that he withdraws his candidature, and the chairman must thereupon write "candidature withdrawn" on the back of the nomination paper, and the candidate must sign his name or initials thereto (*a*). Except as aforesaid, no candidature is to be withdrawn at the meeting (*b*).

If by such withdrawals the number of candidates is reduced below the number of persons to be elected, the chairman must, if desired by any parochial elector present at the meeting, allow a reasonable time at the meeting during which further nomination papers may be handed in to him (*c*).

If any such further nomination papers are handed in to the chairman he must make a statement to the meeting with regard to them, and must decide as to their validity in the manner above stated with reference to the nomination papers first received; and if any of the candidates so nominated are decided by him to have been duly nominated he must give opportunity for putting questions to such of them as are present at the meeting and for receiving explanations from them. The same rules as to withdrawal apply as in the case of the original candidates (*d*).

Declaration of election.

772. If the candidates (including those who have been nominated in place of those whose candidature has been withdrawn) whose nominations respectively the chairman decides to be valid, and whose respective candidatures are not withdrawn, are not more in number than the persons to be elected, such candidates are to be deemed to be duly elected, and must be declared by the chairman to be elected (*e*).

Voting.

773. If the candidates (including those who have been nominated in place of those whose candidature has been withdrawn) whose nominations respectively the chairman decides to be valid, and whose respective candidatures are not withdrawn, are more in number than the persons to be elected, the chairman must put separately to the meeting the names of the several candidates in

(*s*) Parish Councillors Election Order, 1901, r. 9.
(*t*) *Ibid.*, r. 10 (1).
(*a*) *Ibid.*
(*b*) *Ibid.*
(*c*) *Ibid.*, r. 10 (2)
(*d*) *Ibid.*, r. 10 (3)
(*e*) *Ibid.*, r. 11.

SECT. 2. Municipal.

the alphabetical order of their surnames, and must take the votes by show of hands in favour only of each candidate (*f*).

The chairman must count the votes given in favour only of each candidate, and when the names of all the candidates have been put to the meeting and the votes in their favour have been taken and counted, he must state to the meeting the number of votes given for each candidate, and that, subject to a poll being demanded and having to be taken (*g*), he declares to be elected the candidates (up to the total number to be elected) whom he names and who have obtained the largest number of votes (*h*).

When poll to be taken.

774. A poll is not to be taken unless either the chairman of the meeting assents or a poll is demanded by parochial electors present at the meeting, not being less than five in number or one third of those present, whichever number is least (*i*).

The chairman must next ask whether a poll is demanded, and must state the foregoing provision to the meeting, and must name the Act, the schedule, and the rule from which it is taken (*k*).

After the chairman has made this statement a demand may be made that a poll shall be taken as to which of the persons whose names have been put to the meeting by the chairman are to be elected, and if either of the above-mentioned conditions precedent to the taking of a poll be fulfilled he must direct a poll to be taken, unless (i.) by the withdrawal of candidates as above provided the number of candidates is reduced to a number not exceeding the number of persons to be elected, or the number of candidates is otherwise so reduced; or (ii.) the demand for a poll is withdrawn either by all the parochial electors who made it or by such number of them that the number remaining is less than five or than one third of those present when the demand was made, whichever number is least: provided that if some only of the parochial electors who made the demand withdraw it, and the number remaining is less than five or than one third of those present when the demand was made, whichever number is least, the assent of the chairman to the withdrawal is required (*l*).

Order of business.

775. The business relating to the election must be the first business transacted at the meeting, and must be completed without adjournment, and the chairman must allow at least ten minutes to elapse after he has made the statement as to the conditions on which the demand for a poll will be allowed before the meeting can be closed (*m*).

If the chairman has once acceded to the demand for a poll he is *functus officio*, and it is *ultra vires* for him subsequently to declare certain candidates to have been elected (*n*).

(*f*) Parish Councillors Election Order, 1901, r. 12.
(*g*) When a poll is demanded it does not always have to be taken. See next paragraph of the text.
(*h*) Parish Councillors Election Order, 1901, r. 13.
(*i*) Local Government Act, 1894 (56 & 57 Vict. c. 73), Sched. I., Part I., r. 7.
(*k*) Parish Councillors Election Order, 1901, r. 14.
(*l*) *Ibid.*, r. 15 (1).
(*m*) *Ibid.*, r. 15 (2).
(*n*) *R.* v. *Miles* (1895), 64 L. J. (Q. B.) 420.

(iii.) *Proceedings between the Parish Meeting and the Poll.*

Chairman's certificate.

776. The chairman must certify under his hand the name and place of abode of each of the candidates declared by him to be elected as aforesaid. Such certificate must be in the prescribed form or in a form to the like effect (*o*).

Not later than four o'clock in the afternoon of the day next but one after the meeting the chairman must, if the candidates are elected in the manner above appearing, cause a copy of his certificate to be delivered at the office of the returning officer; or if a poll was demanded and directed to be taken and the demand is not withdrawn, he must cause to be delivered at the office of the returning officer a statement in writing under his hand of the names of the candidates in respect of whom the poll has to be taken, with the first valid nomination paper of each of such candidates annexed thereto. He must at the same time forward to the returning officer the other nomination papers, and inform him of the names of any of the candidates whose nominations he decided to be invalid or whose candidature was withdrawn at the meeting (*p*).

If a poll was demanded and directed to be taken and the demand is not withdrawn, the chairman must on the day after the meeting send notice by post or otherwise to each candidate whose name has been put to the meeting that he has been nominated and that a poll has been demanded (*q*).

Declaration when no poll.

777. If as a result of the proceedings a poll has not to be taken, the declaration of the chairman as to the election of the candidates who have received the largest number of votes is final, and cannot be questioned in any proceeding whatever on the ground that the persons declared to be elected, or any of them, were or was not duly elected by a majority of lawful votes (*r*). Perhaps, however, it may be questioned on the ground that the election was wholly avoided by general bribery, treating, undue influence or personation (*s*), or on the ground that the election was avoided by corrupt practices (*t*), or on the ground that the person whose election is questioned was at the time of the election disqualified (*u*), or on the ground that he was not duly elected by a majority of lawful votes (*a*), or on the ground that the election was avoided by illegal

(*o*) Parish Councillors Election Order, 1901, r. 16 (1).
(*p*) *Ibid.*, r. 16 (2).
(*q*) *Ibid.*, r. 17.
(*r*) *Ibid.*, r. 18.
(*s*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 87 (1) (a). The word "perhaps" in the text is necessitated by the Local Government Act, 1894 (56 & 57 Vict. c. 73), Sched. I., Part I., r. 5, which deals with "every question to be decided by a parish meeting" and enacts that "the decision of the chairman shall be final, unless a poll is demanded." This, however, would probably be held not to include, for instance, a case of bribery or of irregular conduct by the chairman himself. See s. 48 of the same statute, on which an argument may be founded in favour of the view that a petition may lie even when no poll has been demanded, and the Local Government (Elections) Act, 1896 (59 Vict. c. 1), which gives the county council power to direct the holding of a new election; but the county council could not well try a case of bribery.
(*t*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 87 (1) (b).
(*u*) *Ibid.*, s. 87 (1 (c).
(*a*) *Ibid.* s. 87 (1) (d).

SECT. 2. Municipal.

practices (*b*). But if this view is correct it cannot be questioned on any of those grounds except by an election petition (*c*).

Publication of certificate.

778. If a poll has not to be taken, the chairman, as early as practicable after the meeting, must by public notice publish his certificate of the names and places of abode of each of the persons elected by posting the same on or near the principal door of each church or chapel in the parish, and in some conspicuous place or places within the parish (*d*), and inform each of the persons elected of the fact of his election (*e*).

Withdrawal of candidate.

779. Any candidate whose name has been put to the parish meeting may not later than twelve o'clock at noon on the Tuesday following the Thursday after the parish meeting for the election withdraw his candidature by delivering, or causing to be delivered, at the office of the returning officer a notice in writing of such withdrawal signed by him (*f*).

If by any such withdrawal of candidates as is last mentioned the number of candidates is reduced to a number not exceeding the number of persons to be elected, or if the number of candidates is otherwise so reduced, the returning officer must give public notice to this effect by posting the same on or near the principal door of each church and chapel in the parish, and in some conspicuous place or places in the parish, stating that no poll will be held and declaring the remaining candidates to be elected (*g*).

The returning officer must forthwith send by post or otherwise a copy of such notice to the clerk of the parish council, or if there is no such clerk to the chairman of the parish meeting, and in either case to each of the persons whom he shall have declared to be elected (*h*). The notice is to be in the prescribed form or in a form to the like effect (*i*).

(iv.) *The Poll.*

Date of poll.

780. The poll, if any, must be held on the first Monday in April, or if that is Easter Monday, the last Monday in March, or in either case such other day, not being earlier than the preceding Saturday or later than the following Wednesday, as may for special reasons be fixed by the county council (*k*).

The law as to the hours of poll, the polling districts, the polling places, and the polling stations and their compartments, as to the notice of the poll, which must be given five clear days before the

(*b*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 25.
(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 87 (2). Compare Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 25. The county council may, however, order a new election (Local Government (Elections) Act, 1896 (59 Vict. c. 1), s. 1 (1)).
(*d*) Parish Councillors Election Order, 1901, r. 41.
(*e*) *Ibid.*, r. 19.
(*f*) *Ibid.*, r. 24.
(*g*) *Ibid.*, r. 25 (1).
(*h*) *Ibid.*, r. 25 (2).
(*i*) *Ibid.*, r. 25 (3).
(*k*) *Ibid.*, r. 21 (1).

day of poll, as to the presiding officers, as to the provision of ballot papers, as to polling agents, and as to the questions to be asked of the electors, and the result of asking such questions, is the same as in the case of elections of rural district councillors, as is the law as to the freedom of election, the prevention of corrupt and illegal practices, and as to counting the votes (*l*).

(v.) *Declaration of the Result.*

Publishing the result of poll.

781. The declaration of the result of the poll must be in the prescribed form or in a form to the like effect (*m*). The returning officer or deputy returning officer, as the case may be, making the declaration must forthwith cause a copy of it to be affixed on the front of the building in which the votes have been counted and another copy to be sent by post or otherwise to the clerk of the parish council, or if there is no such clerk to the chairman of the parish meeting. If the declaration is made by a deputy returning officer, he must also forthwith send it to the returning officer (*n*).

The returning officer must cause public notice to be given of the result of the poll as declared (*o*) by posting the same in or near the principal door of each church and chapel in the parish and in some conspicuous place or places within the parish (*p*). The notice is (subject to the notice prefixed to the prescribed form) to be in that form or in a form to the like effect (*q*). In other respects the law is the same as in the case of an election of rural district councillors (*a*).

SUB-SECT. 14.—*Election of the Chairman of a Parish Council.*

Election of chairman.

782. At the annual meeting the parish council must elect from their own body, or from other persons qualified to be councillors of the parish, a chairman, who shall, unless he resigns or ceases to be qualified, continue in office until his successor is elected (*b*).

The election of a chairman is the first business to be transacted at the annual meeting (*c*).

SUB-SECT. 15.—*Election of the Members of a Board of Guardians.*

(i.) *Preliminary.*

Method of election.

783. In a rural district guardians of the poor, as such, are not to be elected, the district councillors being *ipso facto* guardians of the poor (*d*).

(*l*) Parish Councillors Election Order, 1901, rr. 21—23, 26—30. The rules are differently numbered, but are otherwise, *mutatis mutandis*, identical (see pp. 376—382, *ante*).
(*m*) *Ibid.*, r. 33 (1).
(*n*) *Ibid.*, r. 33 (2).
(*o*) *Ibid.*, r. 34.
(*p*) *Ibid.*, r. 41.
(*q*) *Ibid.*, r. 34.
(*a*) *Ibid.* Compare the rules generally and the governing Acts concerning both —namely, Local Government Act, 1894 (56 & 57 Vict. c. 73); Ballot Act, 1872 (35 & 36 Vict. c. 33); Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50); and Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70).
(*b*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 3 (8).
(*c*) *Ibid.*, Sched. I., Part II., r. 3
(*d*) *Ibid.*, s. 24 (3).

SECT. 2. Municipal.

In urban districts guardians of the poor are specially elected (*e*). The term of office of a guardian is three years, and one-third, as nearly as may be, of every board of guardians must go out of office on the 15th day of April in each year, and their places must be filled by the newly-elected guardians (*f*). To this there are two exceptions—(i.) where the county council, on the application of the board of guardians of any union in their county, consider that it would be expedient to provide for the simultaneous retirement of the whole of the board of guardians for the union they may direct that the members of the board of guardians for that union shall retire together on the 15th day of April in every third year, and such order has full effect, and where a union is in more than one county an order may be made by a joint committee of the councils of those counties (*g*); (ii.) where in 1894 the whole of the guardians of any union in pursuance of an order of the Local Government Board retired together at the end of every third year, they must continue so to retire unless the county council, or a joint committee of the county councils, on the application of the board of guardians or of any district council of a district wholly or partially within the union, otherwise direct (*h*).

In case of the retirement of one-third or the whole of the board of guardians, as the case may be, an "ordinary" election takes place (*i*).

Bye-elections are also held to fill casual vacancies, as in the case of district councils, a returning officer not being authorised or required to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement, the vacancy in such case being filled at the next ordinary election (*k*).

Rules for election of guardians.

784. The election of guardians in urban districts is conducted according to rules made by the Local Government Board (*l*), which in most respects are the same, *mutatis mutandis*, as the rules applicable to election of urban district councillors (*m*). There are, however, some provisions special to the case of the election of guardians (*n*).

Returning officer.

785. The clerk to the guardians of the poor law union in which the parish is situate, or with which it is co-extensive, is the returning officer (*o*). The same provisions apply as in the case of elections of urban district councillors as to who is to be returning officer if the clerk is unwilling, or if his office is vacant, or if he be disabled by illness or other sufficient cause. But there is no power in the case of an election of guardians for the county council to appoint any

(*e*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 20 (3).
(*f*) *Ibid.*, s. 20 (6).
(*g*) *Ibid.*, s. 20 (6) (a).
(*h*) *Ibid.*, s. 20 (6) (b).
(*i*) *Ibid.*
(*k*) *Ibid.*, s. 48 (4) (b).
(*l*) *Ibid.*, s. 20 (5).
(*m*) See Guardians (Outside London) Election Order, 1898, 1 Stat. R. & O. Rev., Vol. X., Poor, England, p. 2. There is one order for the election of guardians outside London and one for the election of guardians inside London. As to the latter, see p. 397, *post*.
(*n*) Guardians (Outside London) Election Order, 1898.
(*o*) *Ibid.*, r. 1 (1).

person in any event to be returning officer (*p*). The clerk of an urban district council is not entitled to act as a deputy returning officer unless either the parish is co-extensive with the urban district or the county council has given directions that the polls for the election of guardians and those for the election of urban district councillors be taken together (*q*).

The returning officer must appoint some place within the union to be his office for the purpose of the election (*a*). The candidates must be persons duly qualified by law (*b*).

Nomination.

786. The nomination paper must state the name of the parish or other area for which the candidate is nominated, the surname and other name or names in full of the candidate and his place of abode and description, and whether he is qualified as a parochial elector of some parish within the poor law union, or, in the case of a parish or united parishes wholly or partly situate within the area of a borough, by being qualified to be elected as a councillor of that borough. It must be signed by two parochial electors of the parish or other area as proposer and seconder, and no more, and must state their respective places of abode. It must be in the prescribed form or in a form to the like effect (*c*).

A parochial elector must not sign nomination papers for more than one parish or other area in the union (*d*).

(ii.) *The Poll.*

Arrangements for polling.

787. The law as to the day and hours of the poll is the same as in the case of urban district councillors, and, as above shown (*e*), the polls for the two elections are often taken together. In such case the returning officer at the election of urban district councillors for the urban district is to be the deputy returning officer for purposes in relation to the poll for the election of guardians for the parish (*f*). But this can only be if either (i.) the parish is co-extensive with the urban district for which an election of urban district councillors is to be held other than a borough or with any ward or wards of any such urban district, or is wholly comprised in any such district which is not divided into wards or in any one ward of such a district which is divided into wards (*g*); or (ii.) the county council is of opinion in any other case that the polls for the election of guardians and for the election of urban district councillors can conveniently be taken together and give directions accordingly to the returning officers for the two elections (*h*). If the case does not fall within the first of these two conditions, and if no directions have been given by the county council in pursuance of the second,

(*p*) Guardians (Outside London) Election Order, 1898, r. 1 (2).
(*q*) *R.* v. *Carter* (1904), 68 J. P. 466.
(*a*) Guardians (Outside London) Election Order, 1898, r. 1 (3).
(*b*) See title LOCAL GOVERNMENT.
(*c*) *Ibid.*, r. 4 (2).
(*d*) *Ibid.*, r. 4 (4).
(*e*) See p. 369, *ante*.
(*f*) *Ibid.*, r. 13 (1), to be read with the rules of the Urban District Councillors Election Order, 1898; see pp. 369 *et seq.*, *ante*.
(*g*) *Ibid.*, r. 12 (1).
(*h*) *Ibid.*, r. 12 (2).

SECT. 2. Municipal.

the clerk of the urban district council cannot validly act as returning officer for the election of guardians (*i*).

Statement of nominations.

788. When the two elections are taken together, immediately after the time prescribed as the latest time for the withdrawal of candidates the returning officer must send to each returning officer for the election of urban district councillors who is deputy returning officer as aforesaid, a statement of the persons validly nominated as guardians for the parish who have not withdrawn their candidatures, giving the surname and other name or names in full of each of such candidates, and his place of abode and description, and the names of his proposer and seconder, and their respective places of abode (*k*).

Polling districts.

789. If the parish is divided into wards for the election of urban district councillors, including the councillors of a borough, the whole of each ward being comprised in the parish, and the list of parochial electors are made out in separate parts for such wards, each ward is to be a polling district for the election of guardians (*l*).

If the parish is not so divided, but is divided into polling districts for the election of county councillors, or if it is not divided into such polling districts but is divided into polling districts for the election of the councillors of a borough, the whole of each district being comprised in the parish, and the lists of parochial electors are made out in separate parts for such districts, each district is to be a polling district for the election of guardians (*m*).

If neither of the preceding paragraphs applies to the parish, the returning officer may, if he thinks fit, divide the parish into polling districts for the election of guardians (*n*).

Voting.

790. Save as above appears, the law as to polling districts, and also that as to polling places and polling stations, is, *mutatis mutandis*, the same (*o*) as in the case of urban district councillors (*p*). When the parish is divided into polling districts, the elector must not vote—*i.e.*, at the same election (*q*)—in more than one polling district (*r*). An elector must not vote in more than one parish in the poor law union (*s*), nor in more than one ward where the parish is divided into wards (*t*).

(iii.) *Counting the Votes.*

Place and method of counting.

791. There is no provision in the case of elections of guardians that the votes must be counted in the district, or in some place near thereto, but when the polls of both elections are taken together they must be counted in such district or place. In all cases they

(*i*) *R.* v. *Carter* (1904), 68 J. P. 466.
(*k*) Guardians (Outside London) Election Order, 1898, r. 13 (2).
(*l*) *Ibid.*, r. 14 (1) (a).
(*m*) *Ibid.*, r. 14 (1) (b).
(*n*) *Ibid.*, r. 14 (1) (c).
(*o*) *Ibid.*, rr. 14, 15.
(*p*) See pp. 369 *et seq.*, *ante*.
(*q*) See note (*g*), p. 370, *ante*.
(*r*) *Ibid.*, r. 14 (2).
(*s*) *Ibid.*, r. 20 (1).
(*t*) *Ibid.*, r. 31.

must be counted as soon as practicable after the close of the poll; and in all other respects the law as to the counting of the votes, the declaration of the result, and the casting vote of the returning officer is, *mutatis mutandis*, the same as in the case of election of urban district councillors (*a*). SECT. 2. Municipal.

SUB-SECT. 16.—*Election of the Chairman of a Board of Guardians.*

792. The law as to the election of the chairman of a board of guardians is the same as in the case of the chairman of a district council (urban or rural) (*b*). Chairman.

A board of guardians may elect a chairman or vice-chairman and not more than two other persons from outside their own body, but from persons qualified to be guardians of the union, and any person so elected will be an additional guardian and member of the board (*c*).

SUB-SECT. 17.—*Elections in the Metropolis.*

(i.) *In General.*

793. The general principles of the law relating to elections in the metropolis are the same as those which prevail in the rest of the United Kingdom, but in matters of detail the law is in many respects and for various reasons exceptional. Thus, the law relating to elections for municipal corporations (*d*) applies generally, *mutatis mutandis*, to elections concerning the corporation of the City of London; but the constitution of this body is much more elaborate than that of an ordinary municipal corporation, and, since it depends upon a series of special private charters, the law of elections in regard to it must necessarily also be read with the provisions of those charters. There are also various customs, binding in law, which are special to the case of this corporation; and consequent upon those peculiarities the statute law is often modified accordingly (*e*). Besides the corporation of the City of London there now exist in the metropolis a number of metropolitan borough councils, whose election is regulated by special statutory rules peculiar in some respects to their case (*f*), though generally similar to the rules for urban district councils elsewhere (*g*). Again, the law as to county councils governing the rest of England (*h*) is modified in detail as regards elections to the London County Council (*i*). There are no parish or district councils in the metropolis (*k*), so that the General principles of law.

(*a*) Guardians (Outside London) Election Order, 1898, r. 21. As to casting votes, see *Watts* v. *Hemming* (1907), 71 J. P. 504. As to *certiorari*, see *Westbury-on-Severn Union Case* (1854), 4 E. & B. 314.

(*b*) See p. 375, *ante*, and Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 59.

(*c*) *Ibid.*, s. 20 (8).

(*d*) As set out pp. 338 *et seq.*, *ante*.

(*e*) The principal peculiarities relating to elections in regard to the corporation of the City are shortly pointed out at p. 394, *post*.

(*f*) The principal peculiarities relating to elections in regard to the metropolitan borough councils are shortly pointed out at p. 395, *post*.

(*g*) As set out pp. 361 *et seq.*, *ante*.

(*h*) As set out pp. 356 *et seq.*, *ante*.

(*i*) The principal peculiarities relating to elections in regard to the London County Council are shortly pointed out at p. 397, *post*.

(*k*) See Local Government Act, 1894 (56 & 57 Vict. c. 73), and London Government Act, 1899 (62 & 63 Vict. c. 14).

SECT. 2. Municipal.

whole of the law set out in respect of parish and district councils (*l*) may be altogether ignored in the case of London. Finally, the rules as to elections of boards of guardians in London are again modified in some details (*a*), but are for the most part identical, *mutatis mutandis*, with those which have already been set forth as applicable to the country generally, though there are some modifications in detail.

(ii.) *The Corporation of the City of London.*

The City Corporation.

794. So much of the law already set out as relates to freedom of election and the prevention of corrupt and illegal practices in municipal elections (*b*) applies, *mutatis mutandis*, in the case of the City to the election of the Lord Mayor, of the aldermen, of the common councilmen, of the sheriffs, and of any officers (*c*) elected by the Lord Mayor, aldermen, and liverymen in "common-hall" (*d*), with certain exceptions (*e*).

The law as to preparations for and procedure at elections (*f*) depends partly upon private Acts of Parliament peculiar to the City, partly upon the special charters of the City, and partly upon Acts of common council dealing with the particular matter; regard must also be had to any customs, binding in law, which prevail in relation thereto (*g*). The procedure of voting by ballot is, however, applied to such elections by one of the private Acts of Parliament above referred to (*h*), and most of the provisions relating to the ballot under this enactment are the same as those which obtain in other cases; nevertheless, it is important to observe some special provisions of this and other private Acts (*i*).

(*l*) Except for the purpose of comparing it with the law of the metropolitan borough councils.

(*a*) The principal peculiarities relating to elections of guardians in London are shortly pointed out at p. 397, *post*.

(*b*) See pp. 345 *et seq.*, *ante*.

(*c*) Including the election of the two aldermen, who must be "of the most sufficient and wisest citizens," from whom the Lord Mayor is chosen (see Pulling, Laws, Customs, Usages, and Regulations of the City of London, (ed. 1842), p. 15), and including sheriffs, bridge-masters, auditors of the City and Bridge-house accounts, chamberlains, and the four "ale-connors" (*ibid.*, p. 83).

(*d*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 35.

(*e*) See p. 395, *post*. As to the government of the City, see title METROPOLIS.

(*f*) Note that the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), Part III., being the part dealing with such preparation and procedure, is not made applicable to the case of the City by the City of London Ballot Act, 1887 (50 Vict. sess. 2, c. xiii.).

(*g*) Thus, so far as the matter is not affected by the Act cited in the following note, the election of the Lord Mayor is regulated by custom. Very full information as to this custom will be found set out in the affidavits by which it was proved in the Court of King's Bench in *R.* v. *Parkyns* (1820), 3 B. & Ald. 668. The last charter-day for the election of Lord Mayor is the 29th September in each year, or the day preceding if that is a Sunday (*ibid.*) It was held in that case that the election of Lord Mayor must have precedence of all other business on that day (*ibid.*) (see Pulling, Laws, Customs, Usages, and Regulations of the City of London (ed. 1842); Norton, Commentaries on the History, Constitution and Chartered Franchises of the City of London; and the Municipal Corporations Commissioners' Report, 1837).

(*h*) City of London Ballot Act, 1887 (50 Vict., sess. 2, c. xiii.).

(*i*) *E.g.*, by *ibid.*, s. 5, "whenever a poll shall be demanded at any election for aldermen or common councilmen or ward officer for any ward within

SECT. 2. Municipal.

Modification of general law.

795. In relation to the statement that the laws for securing freedom of election and preventing corrupt and illegal practices apply, *mutatis mutandis*, to those City elections above referred to, the following exceptions and modifications are to be observed:—

Any costs or expenses directed to be paid out of the borough fund or borough rate in cases of ordinary municipal elections must, if incurred in respect of the election of an alderman or common councilman for any ward, be paid out of the ward rate of that ward, and in any other case must be paid by the chamberlain of the City out of the City's cash (*k*).

A vacancy in any office created by the decision of an election court is to be filled by a new election, and every summoning officer is authorised and required to summon the electors for such election (*l*).

In the case of an election of an alderman or common councilman a sum may be paid and expense incurred not in excess of the maximum fixed by law for the election of a councillor in a municipal corporation (*m*).

In the case of an election by liverymen in common-hall a sum may be paid and expenses incurred, if a poll be not demanded, not exceeding £40, and if a poll be demanded then not exceeding £250; and in the event of a poll being demanded such poll is to take place on the third day after the demand for a poll be made, unless such third day be a Sunday, in which case the poll is to take place on the fourth day, and the poll is to last for one day only and commence at the hour of eight in the morning and close at six in the evening (*n*).

(iii.) *The Metropolitan Borough Councils.*

Rules of Local Government Board.

796. A metropolitan borough council consists of a mayor, aldermen and councillors (*o*), and the general law relating to the election

the said City, the polling shall commence at the hour of ten in the forenoon of the day next following the day fixed for the election, and shall continue during such one day only, and shall not be kept open later than the hour of six in the afternoon of such polling day, but in all other respects shall be subject to the provisions contained in 12 & 13 Vict. c. xciv., s. 6. And in the case of an election by liverymen in common-hall, in the event of a poll being demanded, such poll shall take place on the third day after a demand for a poll be made, and the poll shall last for one day only, and commence at the hour of eight in the morning and close at the hour of six in the evening, as provided by s. 35 (7) of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70)." (The exact effect of that section is set out in the text.)

By s. 6, "Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing."

By s. 11, "All expenses incurred under this Act at any municipal election shall be defrayed in the same manner and out of the same funds as the expenses of such municipal elections have respectively hitherto been defrayed."

There is a schedule containing modifications of the Ballot Act, 1872 (35 & 36 Vict. c. 33).

(*k*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 35 (3).

(*l*) *Ibid.*, s. 35 (5).

(*m*) *Ibid.*, s. 35 (6); see p. 346, *ante*.

(*n*) *Ibid.*, s. 35 (7).

(*o*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 2 (1); see title

SECT. 2. Municipal.

of them is similar to that which governs the election of urban district councillors (*p*). As in that case, the Local Government Board have power to make rules for the conduct of elections (*q*); and the rules which they have made are similar though not identical (*r*).

Day of election.

The ordinary day of election of metropolitan borough councillors is the 1st of November, and for that of the mayor and

METROPOLIS. The number of aldermen must be one-sixth of the number of councillors, and the total number of aldermen and councillors for each borough must not exceed seventy (London Government Act, 1899 (62 & 63 Vict. c. 14), s. 2 (3)).

(*p*) *Ibid.*, s. 2 (5).

(*q*) *Ibid.*, s. 2 (5); and compare Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 23 (5), 31 (1).

(*r*) For the rules relating to the election of urban district councils, see pp. 361 *et seq.*, *ante*. The following are the principal points in which the rules for the metropolitan borough councils (called "the Metropolitan Borough Councillors Election Order, 1903," Stat. R. & O. Rev., Vol. VIII., London County, p. 43) are peculiar to these last-named councils, or to which it seems desirable to direct special attention:—

The town clerk of the borough is to be the returning officer, and he may appoint "one or more" fit persons to be his deputy or deputies. The day for notice of election is to be not later than fourteen clear days before the day of election. The day for the receipt of nomination papers is to be not later than twelve o'clock at noon on the tenth day before the election. The day for sending notice of decision as to the validity of nomination papers and making out the statement as to persons nominated is to be not later than the ninth day before the day of election. The day for withdrawal of candidates is to be not later than twelve o'clock at noon on the sixth day before the day of election. The day for notice of poll must be two clear days at least before the election. Any person registered as a parochial elector of more than one ward in the borough may vote in any one (but in one only) of the wards of which he is registered as a parochial elector. The returning officer may, if he thinks fit, divide any ward in the borough into polling districts for the election of borough councillors, but each district must consist of an area for which a separate list of parochial electors will be available. If any ward is divided into polling districts, each parochial elector must give his vote in the polling district in which the property in respect of which he is entitled to vote is situate, and if it is situate in more than one polling district, he may vote in any one (but in one only) of the polling districts in which it is situate. Where the number of the parochial electors in the ward or (if the ward is divided into polling districts) in any polling district is not more than seven hundred, only one polling station is to be provided for the ward or polling district, and so on for each additional seven hundred parochial electors, or for any less number of parochial electors over and above the last seven hundred. If the number of candidates for any ward in the borough does not exceed three, each candidate may appoint a polling agent for each polling station. If the number of candidates exceeds three but does not exceed twenty, three polling agents, or if the number of the candidates exceeds twenty but does not exceed forty, four polling agents, or if the number of candidates exceeds forty but does not exceed sixty, five polling agents, or if the number of candidates exceeds sixty, six polling agents, may be appointed for each polling station. Each appointment of a polling agent must be in writing, signed by the candidate or candidates making the same, and must be delivered at the office of the returning officer not less than two clear days before the day of the poll. But no candidate must sign more than one appointment of a polling agent for any polling station. If the number of polling agents whose appointments have been so delivered is more than the number allowed as aforesaid, those whose appointments are signed by the larger number of candidates up to the number allowed will alone be valid; or if, by reason of several appointments having the same number of signatures, the validity of the appointments cannot be decided as aforesaid, the returning officer must determine which of the appointments is to have effect. Except as aforesaid no polling agent, whether paid or unpaid, must be appointed for the purposes of the election.

aldermen the 9th of November. If either of these days is Sunday the following day is to be substituted (*s*).

(iv.) *The London County Council.*

Application of general law.

797. The election law relating to the London County Council—the county council for the metropolis (*t*)—is the same as that relating to other county councils, except that the London County Council may from time to time appoint any fit person to be deputy-chairman and to hold office during the term of office of the chairman, and may pay to such deputy-chairman such remuneration as the county council may from time to time think fit (*a*), and that, subject to any rules from time to time made by the London County Council, anything authorised or required to be done by, to, or before the chairman may be done by, to, or before such deputy-chairman (*b*).

(v.) *Boards of Guardians.*

Metropolitan guardians.

798. The general law as to boards of guardians outside London and in London is the same (*c*). But the Local Government Board, by whom the rules for the conduct of such elections are in both cases made (*d*), have made some different provisions in the two cases, though in the main the rules are entirely similar (*e*).

(*s*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 3 (2), (3).

(*t*) The metropolis, for this purpose, means "the City of London and the parishes and places mentioned in Scheds. A, B, and C to the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), as amended by subsequent Acts" (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 100).

(*a*) *Ibid.*, s. 88 (a).

(*b*) *Ibid.*, s. 88 (b).

(*c*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 30.

(*d*) *Ibid.*, s. 23 (5).

(*e*) See the Guardians (London) Election Order, 1898, Stat. R. & O. Rev., Vol. X., Poor, England, p. 41. (The "Hamlet of Penge" is excepted from this Order.) For the rules obtaining outside London, see pp. 389 *et seq.*, *ante*. The following are the chief points in which London rules are peculiar:—

All provisions for and references to the holding of the election of guardians at the same time as any other election are omitted; as are the references in the rules as to nominations to "a parish or united parishes wholly or partly situate within the area of a borough," and the qualification to be elected a councillor of that borough. The returning officer in London is not bound to furnish the overseers of the parish with a supply of ballot papers, nor is there any right under the rules for a parochial elector in London to obtain nomination papers from either the returning officer or the overseers free of charge or at all. The notice, which, in the case of the election of guardians outside London, must be a notice "to the effect" that no poll will be taken etc., must in London be a notice "that no poll will be taken etc."

The rule as to polling districts in London is much shorter, and reads simply thus: "(1.) The returning officer may, if he thinks fit, divide the parish into polling districts for the election of guardians, but each district shall consist of an area for which a separate list of parochial electors will be available. (2.) If the parish is divided into polling districts, each parochial elector shall give his vote in the polling district in which the property in respect of which he is entitled to vote is situate, and if it is situate in more than one polling district, he may vote in any one (but in one only) of the polling districts in which it is situate."

The whole rule (r. 23) of the Election Order governing elections of guardians

SECT. 2. Municipal.

SUB-SECT. 18.—*University Elections (other than Parliamentary).*

Internal elections at universities.

799. The universities, like other private societies, have each their own statutes and regulations for elections other than parliamentary, the statutory enactments upon the subject of university elections not applying to any but the parliamentary elections (*f*).

Part V.—Authorised Excuses and Exceptions.

Excuses and exceptions to mitigate severity of law.

800. Authorised excuses and exceptions are peculiar to the law of elections (*g*). If it were not for them every corrupt or illegal practice by an agent of the candidate, however innocent that candidate might be, would (*h*) avoid an election (*i*). If there were no authorised excuses or exceptions every corrupt or illegal practice, whatever the circumstances might be, would also necessarily make the person guilty of such practice liable to conviction for a criminal offence (*k*).

SECT. 1.—*In Parliamentary Elections.*

First excuse—treating, undue influence, and illegal practices.

801. There are five different authorised excuses and exceptions which may be allowed in respect of parliamentary elections (*l*).

The first is this:—Where upon the trial of an election petition the election court (*m*) reports that a candidate at such election was guilty by his agents of the corrupt practices of treating or undue influence, or of any illegal practice, in reference to such election, and the election court further reports that the candidate has proved to the court (1) that no corrupt or illegal practice was

outside London, which deals with "who is to be deemed to fill casual vacancies at ordinary elections," is omitted from the London Order.

The returning officer in London is not bound to send notices of the result of the election to the overseers for them to publish.

The rule as to expenses is much shorter in London, and reads simply thus: "Any sum which may be payable to the returning officer in respect of his services in taking a poll in the parish, or in respect of expenses incurred in relation to such poll, shall be defrayed by the guardians of the poor law union, and shall be charged to the parish in their accounts."

(*f*) See pp. 322 *et seq.*, *ante*.

(*g*) Suggested by Lord BRAMWELL (see Jelf's Corrupt and Illegal Practices Prevention Acts (1905 ed.), p. 50).

(*h*) As in the case of the offence of bribery, to which the law of authorised excuses does not apply (see pp. 286 *et seq.*, *ante*).

(*i*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 5, 10.

(*k*) *Ibid.*, ss. 6, 10.

(*l*) *Ibid.*, ss. 22, 23, 29 (6), (9), 34 (1). The expression "authorised excuse" is used in the last-named section only, but the phrase "authorised excuses and exceptions" is a convenient phrase to cover the four cases referred to, all of which are based upon the same principle. Strictly, however, the first of these "authorised excuses" is not an "authorised excuse" at all, but an "exception." See *Mackinnon* v. *Clark*, [1898] 2 Q. B. 251, C. A., where it was necessary to distinguish between the two.

(*m*) See pp. 408 *et seq.*, *post*.

committed at such election by the candidate or his election agent, and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent, and (2) that such candidate (*n*) and his election agent (*o*) took all reasonable means (*p*) for preventing the commission of such practices, and (3) that the offences mentioned in the said report were of a trivial, unimportant, and limited character, and (4) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents, then the election of such candidate will not, by reason of the offences mentioned in the report, be void, nor will the candidate be subject to any incapacity under the Act. This is the only authorised excuse which applies to a corrupt practice; and the four conditions above stated must be always fulfilled before a corrupt practice can ever be excused. This excuse will save the seat, but does not prevent the application of the penalising enactments against the persons actually offending. The court in this case, if it finds that the four conditions have been satisfied, is bound to give the relief which is sought (*q*).

In no case can relief be given where bribery is proved (*r*), nor is the case of personation covered by the words of the enactment (*s*).

Second excuse —illegal practices, payments, employment, or hiring.

802. The second authorised excuse is this:—Where on application made it is shown to the High Court (*t*) or to an election

(*n*) Where there were two candidates as respondents to the petition, WRIGHT and BRUCE, JJ., held, with some doubt, that this might be read as applying to each of the candidates separately, and granted relief to the one while refusing it to the other (*Southampton Borough Case* (1895), 5 O'M. & H. 17, 21). Where a candidate took part in a procession round the town, in which the court was satisfied that a good deal of drinking took place, and that he must be taken to have known that there was at least a danger of treating, the court refused to find affirmatively that this candidate "took all reasonable means" to prevent corrupt treating, and, in the absence of such affirmative finding, held that they had no power to relieve under this section against an illegal act, though of a trivial, unimportant, or limited character (*ibid.*, 23).

(*o*) If the election agent has personally sanctioned what is illegal it is fatal to the election (*Walsall Borough Case* (1892), 4 O'M. & H. 123, 127).

(*p*) See note (*n*), *supra*.

(*q*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 22. Note that the word in the final enacting sentence is "shall." The law intends, by this and the next section (see para. 802), to enable judges to relieve candidates from all responsibility from corrupt and illegal practices, when they satisfy the judges that they have done everything on their part to render the election pure and free from corruption. But the onus lies upon any such candidate and upon his election agent to prove, if they ask for such relief, that they personally took all reasonable means for preventing the commission of corrupt and illegal practices (*Rochester Borough Case* (1892), 4 O'M. & H. 156, 160).

(*r*) *Pontefract Case* (1893), Day, 76.

(*s*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 22.

(*t*) The application is made either—(1) by motion to the Divisional Court, which should, as it would seem, consist of judges upon the rota for trial of election petitions (see *Shaw* v. *Reckitt*, [1893] 1 Q. B. 779, 781, which was not, however, decided upon this section), or (2) by application to the judge in chambers, who should, upon the same principle, be one of the judges upon the rota. The application is in either case made *ex parte* after notice. It may be made on affidavit. For a precedent of such affidavit, see *Ex parte Clark* (1885),

SECT. 1. **In Parliamentary Elections.**

court, by sufficient evidence (1) that an act or omission of a candidate at any election or of his election agent, or of any other agent or person, would, by reason of being a payment, engagement, employment, or contract in contravention of the laws for the prevention of illegal practices, or being the payment of a sum or the incurring of an expense or of otherwise being in contravention of any of such provisions, be, but for the authorised excuse, an illegal practice, payment, employment, or hiring (*u*); and (2) that such act or omission arose from inadvertence (*a*)—the party not being aware of what was done or not knowing that it was wrong—(*b*) or from

52 L. T. 260, decided under the analogous section (s. 20) of the Municipal Corporations (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70).

(*u*) A printer guilty of an offence under s. 18 of the Act (see p. 296, *ante*) is not within this sub-section, unless he knew that he was acting in contravention of the Act, in which case he is not within the next sub-section (*Ex parte Lenanton, Ex parte Pierce* (1889), 53 J. P. 263), decided under the analogous sections of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70). But compare *Ex parte Clark* (1885), 52 L. T. 260.

(*a*) An insufficient description of clerks and messengers was excused as inadvertent by CAVE, J., in the *Norwich Case* (1886), 4 O'M. & H. 84, 90, 91; but the learned judge rested his decision on the ground that that part of the Act had never yet been interpreted. It does not, therefore, follow that the excuse would be allowed again in similar circumstances. Compare the *Stepney Case* (1886), 4 O'M. & H. 34, 53, where the illegality of the thing excused was so far from obvious that neither the respondent's counsel nor the counsel for the Director of Public Prosecutions relied upon it until the court pointed out its bearing upon the recriminatory charge.

(*b*) *Stepney Borough Case* (1892), 4 O'M. & H. 178, 180, where streamers hung across the street were held to be banners within s. 16 of the Act (see pp. 301, 302, *ante*). The court said that the election agent might fairly say that the payments for them were "inadvertent" in the sense that he did not know that they were wrong, and the payments were therefore excused under the section (*ibid.*). But where cards for hats were charged as such to the election account, and were paid for by the election agent, when they had been spoken of from the beginning as cards for hats, and had been made specially adaptable for being placed in hats, though no want of good faith was imputed either to the candidate or his election agent, the court refused to excuse this from being an illegal practice. There was no inadvertence, accidental miscalculation, or other ground of a like nature within the meaning of this section. A misconception of the law, it was here said, cannot be treated as inadvertence (*Walsall Borough Case* (1892), 4 O'M. & H. 123, 129). In the *Essex* (*South-Western Division*) *Case* (1886), 2 T. L. R. 388, where a sub-agent voted, not having expected that he would be paid for his work as sub-agent, but afterwards received something as "an honorarium," he did not have relief. In *Ex parte Ayrton* (1885), 2 T. L. R. 215, the candidate had spent extra money in contradicting untrue reports. He was excused; but part of the money had been spent owing to a mistake in the accounts. The statute was passed for the very object of relieving candidates from the entirely unjust and disproportioned consequences of trifling defaults (*East Clare Case* (1892), Day, 161, 164). "To unseat a member of whom we thought that he on his part was not only free from personal corruption, but had taken every possible precaution to prevent corruption and illegal practices, would be doing something which, so far from assisting purity of election, would on the contrary lead to impurity of election" (*Rochester Case* (1892), Day, 98, *per* VAUGHAN WILLIAMS, J., at p. 104). Under the corresponding section (s. 20) of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), many applications have been made, and as the principles and practice in such cases are the same as in parliamentary cases, it will be convenient to refer to them as well as to parliamentary cases in the present note. Some substantial explanation of the inadvertence must be given by the applicant. Where the applicant, a solicitor's clerk, an experienced man,

accidental miscalculation, or from some other reasonable cause of a

who had already gone through two elections, swore, "At the time when my return ought to have been made, my wife, who has had the misfortune to have her leg amputated, was seriously ill, and for four nights I had no rest; it was this fact alone which upset me and made me forget," and the amputation referred to had taken place fifteen years previously, WILLS, J., said: "The application for relief cannot be granted. There is nothing but the bare statement that the omission to make the return and declaration was occasioned by inadvertence. There is no corroboration of that statement and no corroboration by a medical man in support of the medical statements. The affidavit is hardly a candid one. I do not see how we could ever refuse relief in these cases if we granted it in this instance" (*Ex parte Haseldine* (1895), 59 J. P. 71).

Where a candidate agreed to pay an election agent in a municipal case, but, finding out the illegality of the proposed course of action, did not pay him, he was excused (*Brentwood Case, Ex parte Montgomery* (county council election) (1889), 5 T. L. R. 198). If a man goes to an experienced man for advice, and is misled, it is so much in his favour (*Kew Bridge Division Case, Ex parte Layton and Woodbridge* (county council election) (1889), *ibid.*). The employment of a paid agent was excused, where the fact of his being paid was not likely to influence the election (*Re Isleworth Division Election, Ex parte Measom* (county council election) (1889), 5 T. L. R. 221). Where twelve non-voters and one voter were employed as paid messengers, the statutory maximum being two, the candidate was excused, as he had thought that he was allowed to employ as many non-voters as he pleased (*Dunchurch Division Case, Ex parte Darlington* (county council election) (1889), 5 T. L. R. 183).

An excuse was allowed for holding a meeting on licensed premises in a county council election, as the Act applying this law to county council elections was new, but the applicant had to bear the costs of the application (*Re Bennington Electoral Division Election, Ex parte Hutchinson* (1888), 5 T. L. R. 136). Meetings held on licensed premises were excused in favour of the candidate, and the publican where the refreshments were paid for by the persons to whom they were served (*Re West Dorchester Election, Ex parte Gregory and Frost* (county council election) (1889), 5 T. L. R. 221). Where a meeting was moved into licensed premises by reason of a sudden storm, relief was granted (*Syresham Division Case* (1889), 5 T. L. R. 195).

Where the printer's name is given, the omission of the publisher's name has been excused (*Newbury Case, Ex parte Byrch* (county council election) (1889), 5 T. L. R. 195).

An excuse has been allowed for issuing an election address without the printer's name upon it in a county council election (*Re Hailsham Division Election, Ex parte Ives* (1888), 5 T. L. R. 136). The name of the publisher having been omitted from an election placard, the candidate was excused as the Act was a new one, and the legislation on the subject was by reference (*Edwinstowe Division Case, Ex parte Manvers (Lord)* (county council election) (1889), 5 T. L. R. 220).

An excuse was allowed for an irregular payment which could have been but was not made through the election agent, but where everything was *bonâ fide* (*Ex parte Caldicote* (1907), 51 Sol. Jo. 593). So where a payment was made before the election agent was appointed (*Ex parte Williamson* (1906), 51 Sol. Jo. 14).

The omission from a placard of the name of the printer and publisher was excused although the original posters remained up for nearly two months (*Re St. Issels Division Election, Ex parte Vickerman* (county council election) (1889), 5 T. L. R. 220). The contents of the documents must only be used to a very slight extent on such applications (see *Re South Wimbledon Division Election, Ex parte Fenwick* (county council election) (1889), *ibid.*, 221). But if an excuse is sought in regard to a placard which is libellous, the court will be the less ready on account of the defamatory nature of the placard to grant the excuse (*Hampton Division, Ex parte De Wette* (county council election) (1889), 5 T. L. R. 173). The court has no power to grant relief to the printer on such an application (*ibid.*).

Where an elective auditor illegally incurred the expense of an election address, he obtained relief under this provision (*Ex parte Gale* (1905), 69 J. P. 281); but see *Ex parte Tolley, Ex parte Slater* (1907), 71 J. P. 236.

SECT. 1. In Parliamentary Elections.

The consulting of an inaccurate text-book on the part of a candidate at an election of county councillors was held in the particular circumstances, when county council elections were a new thing, to furnish matter for an excuse; but WILLS, J., said that candidates must be more careful in future (*Re Lingfield Division Election, Ex parte Birley* (1889), 5 T. L. R. 220).

Where a man asked the opinion of persons who were not lawyers upon a point of law, and their opinion turned out not to be well founded, he was refused relief (*Ex parte Montefiore* (London School Board election) (1888), 5 T. L. R. 78). It will be very difficult at any future election to excuse any candidate on the ground of ignorance of the law and to say that this amounts to inadvertence, especially if he be reckless and takes no trouble to inform himself as to the nature of his duties and liabilities (*Ex parte Walker* (county council election) (1889), 22 Q. B. D. 388, C. A.).

The illness of an unpaid agent in whose hands the matter has been left is a reasonable cause for an excuse (*Re Ipswich Election* (municipal election) (1887), 3 T. L. R. 397); but a doctor's unsworn certificate that the candidate is ill is not enough (*Re Llandovery Division Election, Ex parte Dinevor (Lord)* (county council election) (1889), 5 T. L. R. 221).

If the affidavits are conflicting the court will incline to allow the law to take its course and will not grant an excuse (*Re Ramsgate Election, Ex parte Hobbs* (municipal election) (1889), 5 T. L. R. 272).

Where the municipal election law differed from the parliamentary election law, and the applicant was misled by his parliamentary experience, relief was granted (*Cambridge Case, Ex parte Hawkins* (municipal election) (1899), 44 Sol. Jo. 102).

The indulgence given in one case will not necessarily be extended in another (*West Lambeth School Board Case, Ex parte Hughes* (1900), 45 Sol. Jo. 79).

Where an application for relief is made on behalf of several candidates, an affidavit by one candidate is insufficient; there must be a joint affidavit by all the applicants (*Re Andrews, Re Streatham Vestry Election* (1899), 68 L. J. (Q. B.) 683). It is not sufficient for the affidavits merely to state that the act in respect of which relief is sought arose from inadvertence and not from any want of good faith; some reasonable excuse for such inadvertence must be shown (*Ex parte Perry* (municipal election) (1884), 48 J. P. 824).

The relief may be granted before the holding of the election (*Westminster Division School Board Case, Ex parte Kyd* (1897), 14 T. L. R. 64). So in *Ex parte Berry* (1910), unreported—the case of an election of a common councilman for the City of London. Where a petition was threatened, relief may nevertheless be granted (*Kidwelly Case, Ex parte Stephens* (1889), 5 T. L. R. 203), especially if the matter as to which relief is sought is the only ground of the petition, so as to save the costs of the latter (*Ex parte Forster* (1903), 67 J. P. 322). When the illegality is serious, the person opposing the relief will get his costs (see *Ex parte Kyd* (1897), 14 T. L. R. 154).

The Divisional Court refused to relieve in a case of the employment of paid canvassers; but the Court of Appeal gave relief, the applicant having failed to be elected in the interim. The applicant has two strings to his bow (*Rhyl Division Case, Ex parte Thomas* (1889), 60 L. T. 728, C. A., *per* BOWEN, L.J.).

When the application is to be relieved against an irregularity, and a petition is presented complaining of that irregularity and also of corrupt practices, the application will not be granted pending the hearing of the petition (see judgment of POLLOCK, B., in *Ex parte Wilks* (1885), 16 Q. B. D. 114).

Less notice of an application for relief is required if made at the trial than otherwise (*Hexham Case* (1892), Day, 76; *Walsall Case* (1892), *ibid.*). In the *Lichfield Case* (1892), *ibid.*, an application for relief was granted after the petition had been withdrawn.

The application must not be made hypothetically in respect of certain matters, "if found by the court to be illegal" (*Walsall Case, supra*).

When a petition is likely to be presented the right course is to allow the application for an excuse to stand over (*Re Walton Division Election, Ex parte Hempson* (1889), 5 T. L. R. 220).

The court will grant relief from an illegal practice in a proper case, even although an election petition has been presented, when the sole grounds for such petition are those in respect of which relief is sought and none of the facts are in dispute (*Ex parte Forster* (rural district council election) (1903), 89 L. T. 18, *per* Lord ALVERSTONE, C.J., and CHANNELL, J.).

like nature (*c*), and in any case did not arise from any want of good faith (*d*), and (3) that such notice (*e*) of the application, as to the court seems fit, has been given in the county or borough for which the election was held, and that in the circumstances it seems to the court to be just that the candidate and the said election agent and person, or any of them, should be relieved, the court may make an order (*f*) allowing such act or omission to be an exception from the

There is an appeal to the Court of Appeal, which court will not, however, ordinarily interfere with the discretion of the Divisional Court, though in an exceptional case—where the judges held different views—it did so interfere (*Richmond Case, Ex parte Walker* (county council election) (1889), 22 Q. B. D. 384, C. A.).

A candidate who has committed an illegal act must apply for relief as soon as he discovers the illegality; otherwise he will not be allowed the excuse (*Re Pembroke Election* (county council election) (1889), 5 T. L. R. 272).

(*c*) The section is intentionally very carefully guarded, and has always been limited by the courts to small and accidental mistakes (*Southampton Borough Case* (1895), 5 O'M. & H. 17, 25). Thus, in a case where DENMAN, J., held that a candidate was guilty of illegal employment and illegal payment in employing and paying persons to endeavour to obtain votes and to distribute canvassing handbills, he excused him under this section because the Act was new and by no means easy to master, and because "the blot in question" was so far from obvious that opposing counsel did not rely on it until the court itself had pointed out its bearing. But he said that he might hold otherwise on a future occasion with precisely similar facts (*Stepney Case* (1886), 4 O'M. & H. 34, 52; compare *Norwich Case* (1886), 4 O'M. & H. 84, 91).

(*d*) With regard to the question of *bona fides* in making illegal payments, it is very material to consider what was the character of the election in other respects—whether in other respects it was pure—so as to show that there has been a *bonâ fide* desire to avoid illegal practices (*Stepney Borough Case* (1892), 4 O'M. & H. 178, 182).

(*e*) Notice of the application must be given to the defeated candidate, to the returning officer, and to the constituency by advertisement (*Re South Shropshire Election* (1886), 34 W. R. 352). Notice should also be given to the Election Petitions Office, Room 175, Royal Courts of Justice. Compare *Ex parte Lenanton, Ex parte Pierce* (1889), 53 J. P. 263. In the *Norwich Case, supra,* notice given in court at the trial of the petition itself when the persons interested were present was held sufficient to satisfy the statute. Insufficient notice is a ground for refusing relief (*New Swindon Case, Ex parte Hinton* (county council election) (1889), 5 T. L. R. 195). The notice must be precise as to the relief claimed, otherwise any person opposing will get his costs (*Rhyl Division Case, Ex parte Keatinge* (county council election) (1889), 5 T. L. R. 195). Notice should be given to the petitioners of the respondent's intention to apply at the trial for relief, so as so enable them to consider whether to proceed with the petition, otherwise the respondent may have to bear the costs of the petition although he obtains relief (*Stepney Case* (1892), Day, 77. See the reasons given by CAVE, J., in his judgment, *ibid.*, at p. 125). Whatever notice is given, a particular voter may not in fact have notice; but this fact will not give such a voter a right to oppose the granting of the relief after the order has been made (*Re Wigan Election* (municipal election) (1885), 2 T. L. R. 159). In order to support an application for relief, it is not sufficient for notice of intention to make the application to be advertised in local papers, but such notice must be published in such a manner as will ensure reasonable certainty that persons interested will have actual notice (*Ex parte Perry* (municipal election) (1884), 48 J. P. 824). In that case it was said that posters or placards should have been used; but this is not always insisted upon (*Westminster Division School Board Case, Ex parte Kyd* (1897), 14 T. L. R. 64). So in *Ex parte Berry* (1910), unreported, where the only advertisement in the case of a City of London municipal election was in the *Daily Telegraph*.

(*f*) The effect of such an order is to do away with the illegal practice so relieved against, so that when the court comes to make its report to the Speaker of the House of Commons (see p. 460, *post*), if that practice is all that has been

SECT. 1. In Parliamentary Elections.

provisions which would otherwise make it an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person will not be subject to any of the consequences under such provisions of the said act or omission (*g*); but the court in the case of this excuse has complete discretion in the matter (*h*).

Third excuse —time of payment of expenses.

803. The third excuse is confined to cases where those provisions (*i*) have been disobeyed which stipulate as to the manner in which and the time within which payment is to be made in respect of any expense incurred on account of or in respect of the conduct or management of the election (*k*). When the election court reports that it has been proved to the court by a candidate that any payment made in contravention of such provisions was made without his sanction or connivance, the election of such candidate is not to be void, nor is he to be subject to any incapacity under the provisions in question by reason only of such payment having been made in contravention thereof (*l*).

Fourth excuse —payment of disputed claim, and certain other payments which would be otherwise illegal.

804. The fourth authorised excuse is one for which application can only be made upon the commission of what would otherwise be an offence. On cause shown to the satisfaction of the High Court, such court, on application by the claimant or by the candidate or his election agent, may by order give leave for the payment by a candidate or his election agent of a disputed claim (*m*) or of a claim for any such expenses as aforesaid (*n*), although sent in after the time limited (*o*), or although the same was sent in to the candidate

proved against the respondent to the petition, the court will have to report that there has been no illegal practice (*Hexham Division Case* (1892), 4 O'M. & H. 143, 144, 145).

(*g*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 23. The court intends by this section and the preceding section to enable judges to relieve candidates from all responsibility for corrupt and illegal (in this section only illegal) practices, where they satisfy the judges that they have done everything on their part to render the election pure and free from corruption. It is for the candidate and his election agent to prove, when such relief is asked for, that they personally took all reasonable means for preventing the commission of corrupt and illegal practices (*Rochester Borough Case* (1892), 4 O'M. & H. 156, 160). When the relief is sought for under the powers which the Act confers upon the court, the person who obtains that relief has himself always to bear the cost of obtaining it. If, therefore, the respondent in an election petition delays until the last moment to come and ask for it, so that the whole case has to be fought out, he has only himself to blame for not taking an earlier opportunity of giving notice of what he intends to do and thereby giving the petitioners an opportunity of reconsidering their position (*Stepney Borough Case* (1892), 4 O'M. & H. 178, *per* CAVE, J., at p. 183).

(*h*) Thus, in the case of the *Walsall Borough Case* (1892), 4 O'M. & H. 123, 129, above referred to, Sir HENRY HAWKINS said that, even if he had found that the conditions had been fulfilled to give him the power, he would not have used his discretion in favour of the respondent.

(*i*) *I.e.*, Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 29.

(*k*) See p. 298, *ante*.

(*l*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 29 (6).

(*m*) See p. 298, *ante*.

(*n*) That is to say, "expenses incurred on account of or in respect of the conduct or management of the election" (see the preceding paragraph of the text).

(*o*) See p. 298, *ante*.

and not to his election agent (*p*). Any sum specified in the order giving leave may be paid by the candidate or his election agent, and when paid in pursuance of such leave is deemed to be paid within the time limited (*q*).

Fifth excuse —irregularities as to the election and declaration of expenses.

805. The last of the authorised excuses applies only to cases where the return and declarations respecting the expenses of a candidate at an election have not been transmitted as required by statute (*r*), or, being transmitted, contain some error or false statement. In such case, if either (1) the candidate applies to the High Court or an election court and shows that the failure to transmit such return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness or misconduct of his election agent or sub-agent, or of any clerk or officer of such agent, or by reason of inadvertence or of any reasonable cause of a like nature (*s*), and not by reason of any want of good faith on the part of the applicant; or (2) if the election agent of the candidate applies to the High Court or an election court (*t*) and shows that the failure to transmit the returns and declarations which he was required to transmit, or any part thereof, or any error or false statement therein, arose by reason of his illness or of the death or illness of any prior election agent of the candidate (*a*) or of the absence, death, illness or misconduct of any sub-agent, clerk, or officer of an election agent of a candidate or by reason of inadvertence (*b*), or any reasonable cause of a like nature, and not by

(*p*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 29 (9). *E.g.*, where it was shown by affidavit that the claim was made by a person whom the candidate had employed to prepare canvassing books in anticipation of the election, but whom, in the event, he had not appointed to be his election agent, and the claim for such work was disputed and returned as such, but subsequently £60 was allowed therefor in an arbitration, an order was made under this section (*Lowestoft Division Case, Ex parte Crossley* (*Sir S.*) (1887), 4 T. L. R. 38).

(*q*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 29 (10).

(*r*) See p. 336, *ante*.

(*s*) *E.g.*, where sub-agents' charges had been first disallowed as excessive but subsequently shown to be reasonable (*Re South Shropshire Election* (1886), 2 T. L. R. 347).

(*t*) See p. 408, *post*.

(*a*) See p. 266, *ante*.

(*b*) Thus, where men were employed and paid to force canvassing handbills into the hands of voters, and to prevent any other persons from approaching them by superior physical force—not only to distribute them, but to endeavour to procure their votes—the return described the payment as one for "distributing bills." DENMAN, J., thought that the description was inaccurate and insufficient. But he thought that the inaccuracy and insufficiency arose, not from any want of good faith, but from inadvertence arising from difficulties in understanding the Act. He intimated, however, in his judgment that in future a similar case would not be treated so leniently (*Stepney Case* (1886), 4 O'M. & H. 34, 53). So, again, in the *Norwich Case* (1886), 4 O'M. & H. 84, 91, insufficient descriptions of clerks and messengers were excused as inadvertent, but with a similar warning as to future cases. Where the names of persons from whom rooms had been hired were omitted from the return, and the election agent had included his own personal expenses in the sums paid for hiring the rooms, the court held that these things had been done through inadvertence, and used its powers under this section, having regard to the fact that there was

SECT. 1. In Parliamentary Elections.

reason of any want of good faith on the part of the applicant, the court may, after such notice (*c*) of the application in the said county or borough, and on production of such evidence of the grounds stated in the application and of the good faith of the application and otherwise as to the court seems fit, make such order for allowing an authorised excuse for the failure to transmit such returns and declarations as to the court seems just (*d*).

When it appears to the court that any person, being or having been an election agent or sub-agent, has refused or failed to make such return or to supply such particulars as will enable the candidate and his election agent respectively to comply with the statutory provisions (*e*) as to the return and declaration respecting election expenses, the court, before making an order allowing the excuse lastly referred to, must order such person to attend before the court, and on his attendance must, unless he shows cause to the contrary, order him to make the return and declaration or to deliver a statement of the particulars required to be contained in the return as to the court seems just, and to make or deliver the same within such time and to such person and in such manner as the court may direct, or may order him to be examined with respect to such particulars, and may, in default of compliance with any such order, order him to pay a fine (*f*).

Conditional order.

806. The order may make the allowance conditional upon the making of the return and declaration in a modified form or within an extended time, and upon the compliance with such other terms as to the court seems best calculated for carrying into effect the objects of the statutory provisions relating to the matter. An order allowing an authorised excuse will relieve the applicant for the

nothing in the general account of a suspicious nature, and to the fact that the court was perfectly satisfied not only that there had been no money misspent, but that there had been no intention in the framing of this account to mislead anybody in this important particular (*Buckrose Division Case* (1886), 4 O'M. & H. 110, 119). The loss of the return would not be covered by the words "by reason of inadvertence or any reasonable cause of a like nature" (*Mackinnon* v. *Clark*, [1898] 2 Q. B. 251, 257, C. A.). The following decisions have been given in regard to the corresponding section of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 21 (see p. 407, *post*):— Where the expenses were *nil* and the candidate had supposed that this fact made it unnecessary for him to return them, he was excused (*Hanley Case* (municipal), *Ex parte Pennington* (1898), 46 W. R. 415; but the return and declaration in a similar case were ordered to be made within three days (*Ex parte Robson* (1886), 18 Q. B. D. 336).

When the Act was new a candidate at an election of common councillors for a ward of the City of London, who did not know that he must make a return of expenses and so let the time pass on until it was too late, was excused, but the court said that candidates must take more pains to acquaint themselves with the provisions of the Act, as on other occasions the court might not be so lenient (*Ex parte Matthews* (1886), 2 T. L. R. 548).

(*c*) Notice given in court at the hearing of an election petition when the persons interested are present may be held sufficient to satisfy the statute (*Norwich Case* (1886), 4 O'M. & H. 84, 89, 90).

(*d*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 34 (1).

(*e*) See p. 337, *ante*.

(*f*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 34 (2).

order from any liability or consequences under the said provisions in respect of the matter excused by the order; and where it is proved by the candidate to the court that any act or omission of the election agent in relation to the return and declaration respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing such act or omission, the court must relieve the candidate from the consequences of such act or omission on the part of his election agent (*g*).

Date of allowance of excuse.

The date of the order, or, if conditions and terms are complied with, the date at which the applicant fully complies with them, is called for this purpose "the date of the allowance of the excuse" (*h*).

SECT. 2.—*In Municipal Elections.*

Municipal elections.

807. The first two of the five authorised excuses above stated are, *mutatis mutandis*, identically the same in municipal as in parliamentary elections (*i*). The law as to the remaining excuses is similar in substance to that obtaining in parliamentary elections, and is as follows:—

The county court for the district in which the election was held, or the High Court or an election court, may on application either of the candidate or a creditor allow any claim to be sent in and any expense to be paid after the time limited, and a return of any sum so paid must forthwith after payment be sent to the town clerk (*k*). If the payment was made without the sanction or connivance of the candidate it does not in the case of a municipal election need any excuse (*l*); and the provisions limiting the time for sending in claims and paying expenses do not apply at all to cases of elections of district councillors, parish councillors, or boards of guardians (*m*).

If the candidate applies to the High Court or an election court and shows that the failure to make the prescribed return and declaration or either of them, or any error or false statement therein, has arisen by reason of his illness or absence, or of the absence, death, illness, or misconduct of any agent, clerk, or officer, or by reason of inadvertence (*n*), or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the court may, after such notice (*o*) of the application, and on production of such evidence of the grounds stated in the application and of the good faith of the applicant and otherwise as to the court seems fit, make such order for allowing the authorised excuse for the failure to make such return and

(*g*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 34 (3).
(*h*) *Ibid.*, s. 34 (4)
(*i*) *Ibid.*, ss. 19, 20. For case law, see pp. 398—406, *ante.*
(*k*) *Ibid.*, s. 21 (6).
(*l*) *Ibid.*, s. 21 (1).
(*m*) *Ibid.*, s. 37, and Sched. I.; and Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (3) (b).
(*n*) For case law, see pp. 398—406, *ante.*
(*o*) See pp. 403, *ante.*

SECT. 2. In Municipal Elections.

declaration as to the court seems just (*p*). The law prescribing the necessity for a return and declaration does not apply at all in cases of elections of district councillors, parish councillors, and boards of guardians (*q*).

Part VI.—Petitions.

SECT. 1.—*In Parliamentary Elections.*

SUB-SECT. 1.—*The Election Judges and their Jurisdiction.*

Appointment of judges.

808. The jurisdiction relating to election petitions is vested in the King's Bench Division of the High Court of Justice, which has, subject to the provisions of the Parliamentary Elections Act, 1868 (hereinafter referred to as the Act), and the Acts amending it, the same powers, jurisdiction, and authority in respect of an election petition and all proceedings thereon as it would have if such petition was an ordinary cause within its jurisdiction (*a*). Election petitions are tried by two judges (*b*) of the King's Bench Division (*c*) of the High Court of Justice, who are selected from a rota in accordance with any rules of court which may be made for the purpose. Subject to any such rules—and so far none have been made—three puisne judges of the King's Bench Division (none of them being a member of the House of Lords) are to be selected on or before 4th November in each year by a majority of votes of the judges of that division to be placed on the rota for the trial of election petitions during the following year. If at a meeting for the purpose of such selection the judges present are equally divided in their choice of any judge to be placed on the rota, the Lord Chief Justice, or, in his absence, the senior judge present, has a second or casting vote. The choice of a judge to fill an occasional vacancy on the rota, or to assist the judges on the rota as an additional judge, is made in like manner (*d*).

A judge on the rota is re-eligible in the succeeding or any subsequent year (*e*). The judges on the rota take the trial of election petitions according to their seniority on the bench, unless they come to some other agreement amongst themselves, in which case each trial is taken in accordance with such agreement (*f*).

Rules.

809. The judges on the rota were empowered by the Act to make from time to time rules of court for the effectual carrying out of

(*p*) Municipal Elections (Corrupt and Illegal Practices) Act, 1882 (47 & 48 Vict. c. 70), s. 21 (7).

(*q*) *Ibid.*, s. 37, and Sched. I.; and Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (3) (b).

(*a*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 32; Order in Council dated 16th December, 1880, amending Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 2. The expression "the court" for the purposes of the Act means the High Court of Justice (*ibid.*).

(*b*) Parliamentary Elections and Corrupt Practices Act, 1879 (42 & 43 Vict. c. 75), s. 2.

(*c*) Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 13, amending Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (1).

(*d*) As to the expiration of year of office during pendency of trial etc., see p. 439, *post*.

(*e*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (4).

(*f*) *Ibid.*, s. 11 (6).

the Act, and for the regulation of matters relating to the trial and costs of election petitions and the practice and procedure connected with them, as well as to the certifying and reporting on them, and from time to time to alter and revoke these rules and to make other or additional rules. Any rules which have been so made are within the powers conferred by the Act and have the same force as if they had been enacted in the body of the Act (*g*). Under this power rules were drawn up on 21st November, 1868, to which fresh rules were on subsequent occasions added, which are still in force and are called Parliamentary Election Petition Rules.

Rule committee.

The power of making, altering, and revoking rules for the purposes of the Act and the Acts amending it and for the purposes of the Corrupt and Illegal Practices Prevention Act, 1883, is now vested in the Rule Committee (*h*), which is constituted for the purpose of making rules regulating the practice and procedure of the Supreme Court (*i*).

Any rule made in pursuance of the Act, if made in Term time, is published by being read by the master in the King's Bench Division of the High Court of Justice, and, if made out of Term time, by a copy thereof being put up at the master's office (*k*).

When no provision by rules.

810. With regard to matters as to which no rules have been made or in so far as the rules which have been made do not apply, the principles, practice, and rules on which committees of the House of Commons acted in dealing with election petitions before the Act are to be observed as far as may be (*l*).

Any jurisdiction vested in the High Court by the Corrupt and Illegal Practices Prevention Act, 1883, subject to any rules of court which may be made (*m*), may, in so far as it relates to indictments or other criminal proceedings, be exercised by any judge of the King's Bench Division (*n*). In other respects, subject to such rules (*m*), such jurisdiction may be exercised by one of the judges on the rota for the trial of election petitions sitting either in court or at chambers, or by a master of the Supreme Court in manner directed by and subject to an appeal to the judges on the rota (*o*). But a master has no jurisdiction to deal with an order declaring any act or omission to be an exception from the provisions of the above Act with respect to illegal practices, payments, employments, or

(*g*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 25

(*h*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 56 (2).

(*i*) Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 17; Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 17; Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 19; Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 4; Judicature (Rule Committee) Act, 1909 (9 Edw. 7, c. 11); and see title COURTS, Vol. IX., p. 65.

(*k*) Election Petition Rules, r. 61, Statutory Rules and Orders Revised, Vol. XII., Supreme Court, England, pp. 640 *et seq.*

(*l*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 26.

(*m*) No rules under this Act have yet been made. See *Shaw* v. *Reckitt*, [1893] 1 Q. B. 779.

(*n*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 56.

(*o*) *Ibid.*; *Shaw* v. *Reckitt*, *supra*.

SECT. 1. In Parliamentary Elections.

hirings, or with an order allowing an excuse in relation to a return or declaration respecting election expenses (*p*).

Appointment of master.

811. A master of the Supreme Court is appointed by the Lord Chief Justice to perform the duties relegated to the prescribed officer by the Act, and his remuneration in respect thereof is determined by the Lord Chief Justice with the consent of the Treasury (*q*).

Roll of agents.

812. The master keeps a roll, properly headed, for entering the names of all persons entitled to practise as solicitors or agents before the court and judges, similar to the roll of solicitors of the Supreme Court (*r*), which is under the control of the Supreme Court, as to striking off and otherwise (*s*). The entry on the roll is written and subscribed by the solicitor or agent or some attorney authorised by him in writing to sign on his behalf, who must set forth in it the name, description, and address in full (*t*). The master may allow any person upon the roll of solicitors of the Supreme Court for the time being to subscribe the roll. Permission to subscribe it may be granted by the court or judge to any other person upon affidavit showing the facts which entitle the applicant to practise as a parliamentary agent according to the principles, practice, and rules of the House of Commons which prevailed in cases of election petitions (*a*).

Registrar.

813. A registrar is appointed for each court for the trial of an election petition, whose duty it is to attend at the trial in the same manner as clerks of assize and of arraigns attend at the assizes. He is to perform by himself, or, in case of need, by his sufficient deputy, all the duties of an officer of a court of record, and all other duties that may be prescribed to him (*b*). The appointment of the registrar is made by the judges on the rota.

Extent of jurisdiction.

814. Subject to the provisions of the Act, the judges have the same powers, jurisdiction, and authority as a judge of the High Court and a judge of Assize and Nisi Prius (*c*). The court over which they preside for the trial of an election petition is called an

(*p*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 56.

(*q*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 27; Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 25.

(*r*) See Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 21; Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 87; Solicitors Act, 1888 (51 & 52 Vict. c. 65), s. 5. See title SOLICITORS.

(*s*) Election Petition Rules, r. 56.

(*t*) *Ibid.*, r. 57.

(*a*) *Ibid.*, r. 58. See May, Parliamentary Practice, 11th ed. (1906), p. 709.

(*b*) Election Petition Rules, r. 39.

(*c*) In view of the provisions in the Act referring to the rights of electors, constituencies, and of the public, the jurisdiction conferred by the Act is not in all respects the same as that of the court in ordinary causes (*Aldridge* v. *Hurst* (1876), 1 C. P. D. 410, *per* GROVE, J., giving the judgment of the court, at p. 413); Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 29.

"Election Court" (*d*), and it is one of record (*e*). The judges are received at the place where an election petition is to be tried in like manner, as far as circumstances allow, as a judge of assize is received at an assize town. Where the petition to be tried relates to a county election they are received by the sheriff, and in any other case by the mayor of the borough where the petition is to be tried, if the borough has a mayor, and if it has not a mayor, by the sheriff of the county in which it lies, or by some one named by him. The judges are attended on the trial in like manner as if they were judges sitting at Nisi Prius.

Expenses of election court.

The travelling and other expenses of the judges, including those of such attendance and those properly incurred by the sheriff or mayor in receiving them, and in providing them with necessary accommodation and with a proper court, are defrayed by the Treasury out of money provided by Parliament (*f*).

SUB-SECT. 2.—*Presentation of Petition.*

In what case petition may be presented.

815. Where there is a complaint of an undue return or undue election (*g*) of a member to serve in Parliament for a county (*h*) or borough (*i*) a petition may be presented to the King's Bench Division of the High Court of Justice (*j*). A petition may also be brought where the complaint is that no return has been made. Such a petition is deemed to be one within the meaning of the Act (*k*).

Who may present.

A petition may be presented by any one or more of the following persons:—(1) Some person who voted, or who had a right to vote, at the election to which the petition relates (*l*); or (2) some

(*d*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 64. If the matter comes before the High Court that court is meant by the term "Election Court" (*ibid.*). Proceedings are entitled in the "Court for the Trial of an Election Petition" for the county [*or* borough] of between petitioner and respondent (Election Petition Rules, r. 38).

(*e*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 29.

(*f*) *Ibid.*, ss. 28, 30. The expenses of the shorthand writers' attendance at the trial (see p. 440, *post*) are deemed to be part of the expenses of the reception of the judges (*ibid.*, s. 24).

(*g*) As to what will constitute an undue election or undue return, see pp. 257 *et seq.*, *ante*.

(*h*) "County" includes any riding, parts or division of a county, but not the county of a city or county of a town (Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 3).

(*i*) "Borough" includes cities, universities, and any places or combination of places not being a county (Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 3).

(*j*) *Ibid.*, s. 5. The section says "the Court of Common Pleas." As to the merger of the Court of Common Pleas in the King's Bench Division, see Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 32; and see title COURTS, Vol. IX., p. 52.

(*k*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 52.

(*l*) The words, *primâ facie*, include a person who has voted without being entitled to do so. In *Harford* v. *Linskey*, [1899] 1 Q. B. 852, WRIGHT, J., quoting s. 88 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), the words of which are, as regards this point, the same, expressed the view (at pp. 859, 862) that they would cover the case of a voter who had no right to vote. The point seems never to have been decided. The fact of the mention of the alternative in the section tends to show that such a case is included, as otherwise, it is submitted, it would have been sufficient to say merely "some person who had a right to vote." The question was raised in the *Walsall Case* (1892), Day, 1, but was not decided.

SECT. 1. In Parliamentary Elections.

person claiming to have had a right to be returned or elected at such election; or (3) some person alleging himself to have been a candidate at such election (*m*).

A candidate who has been nominated in proper form, though in fact not qualified, may present a petition (*n*). But a person whose nomination is invalid in form is not entitled to present a petition (*o*).

Mode of presentation.

816. The presentation of a petition is made by leaving it at the office of the master (*p*), and the master or his clerk is to give a receipt for it, if required to do so (*q*). A copy of the petition for the master to send to the returning officer must be left at the same time (*r*), and it is the master's duty to send it on to him forthwith, and the returning officer must immediately publish it in the county or borough, as the case may be (*s*). The petition must be signed by the petitioner or by each petitioner if there be more than one (*t*).

Time.

A petition must be presented within twenty-one days after the return of the member to whose election it relates has been made to the Clerk of the Crown. But if the return or the election is challenged on an allegation of corrupt practices (*a*), and the petition specifically alleges a payment of money or other reward to have been made since the return by the member, or on his account, or with his privity, in pursuance or in furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of such payment (*b*). Where, also, a petition questions a

(*m*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 5.

(*n*) *Harford* v. *Linskey*, [1899] 1 Q. B. 852. That case was decided on the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), in which a candidate is defined as "a person elected or having been nominated, or having declared himself a candidate for election." But if disqualification is obvious, see, *contra*, opinion of the court in *Harford* v. *Linskey*, *supra*.

(*o*) *Monks* v. *Jackson* (1876), 1 C. P. D. 683. But see the doubt expressed by WRIGHT, J. (*Harford* v. *Linskey*, *supra*, at p. 859) as to this being necessarily so.

(*p*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 6 (3). As to the appointment of the master, see p. 410, *ante*.

(*q*) Election Petition Rules, r. 1.

(*r*) *Ibid.* In practice four copies should be left.

(*s*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 7; Election Petition Rules, r. 12.

(*t*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 6 (1).

(*a*) As to what are corrupt practices, see p. 281, *ante*.

(*b*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 6 (2). In the *Kidderminster Borough Case* (1874), 2 O'M. & H. 172, MELLOR, J., expressed an opinion that where a petition is presented under this provision within the extended time, the case must be confined to the payment or payments made within the twenty-eight days and may not embrace those made within the twenty-one days after the return. But he stated that he had previously been of opinion that the effect of the provision was to grant an extension of the time in the case of an allegation of such payment, and not to preclude inquiry being made as well into matters which may be alleged in a petition brought within twenty-one days. He stated that there were arguments and opinions in favour of either construction, and that if the point had been essential to the result of the case, he would have reserved it for the decision of the High Court. In the *Kidderminster Borough Case*, *supra*, a petition had been brought within twenty-one days and had been withdrawn. See also the *Brecon Case* (1871), *Times*, April 22nd. In that case the petition alleged treating, and seemingly, from the report, undue influence. After the return application was made to LUSH, J., at chambers to have the words "before and during the election" struck out of the allegation of corrupt practices contained in the petition, on the ground that

return or an election upon an allegation of an illegal practice (*c*) it may, in so far as respects such illegal practice, be presented at any time before the expiration of fourteen days after the day on which the returning officer receives the return and declarations as to election expenses by the member to whose election the petition relates and his election agent (*d*). Moreover, if the petition specifically alleges a payment of money to have been made or some other act to have been done since that day by the member or an agent of the member, or with the privity of the member or his election agent, in pursuance or in furtherance of the illegal practice alleged in the petition, the latter may be presented at any time within twenty-eight days after the date of the payment or other act that is alleged in it (*e*). If a petition has been presented within the time limited it may, with leave of the High Court (*f*), be amended, for the purpose of questioning the return or the election on the allegation of an illegal practice, within the time which is allowed for the presentation of a petition questioning the return on such an allegation (*g*).

Extension of time.

The court has not jurisdiction to allow an amendment of a petition after the time prescribed by statute by the introduction of a fresh substantive charge (*h*). There is not, it is submitted, jurisdiction to allow such an amendment, whether the charge sought to be added be one of a fresh nature, or whether it be one only of a fresh instance but not covered by the allegations in the petition as standing.

Alteration of charge.

The foregoing provisions as to the time within which a petition

Calculation of time.

the petition was based on the charges of offences after the election. It was ordered that the words "before and during" should be struck out so as to confine the inquiry to the last-mentioned charges. The case appears to be imperfectly reported, and it is not expressly stated whether the petition was, in fact, brought within the twenty-eight days, and after the lapse of the twenty-one days. It will be observed that, though the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 6 (2), gives the extended time for the presentation of a petition alleging a corrupt payment of the kind referred to after the return, it does not, expressly at least, give power to amend a petition brought within twenty-one days for the purpose of alleging such a payment. See also the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 40 (1), (2), (3), *infra*.

(*c*) As to what is an illegal practice, see p. 293, *ante*.

(*d*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 40 (1) (a).

(*e*) *Ibid.*, s. 40 (1) (b).

(*f*) Such leave may be given by one of the judges for the time being on the rota for the trial of election petitions or by a master of the Supreme Court, subject to an appeal to these judges (*ibid.*, s. 56 (1)); *Shaw* v. *Reckitt*, [1893] 1 Q. B. 779). Leave ought not to be given on an *ex parte* application (*ibid.*).

(*g*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 40 (2). The power of amendment givenby this provision applies, likewise, where it is sought to amend by alleging an illegal payment, employment, or hiring which is not an illegal practice (*Buckrose Division Case* (1886), 4 O'M. & H. 110, 116).

(*h*) *Maude* v. *Lowley* (1874), L. R. 9 C. P. 165 (municipal), which was followed in *Clark* v. *Wallond* (1883), 52 L. J. (Q. B.) 321 (municipal); *Norwich Election Petition, Birkbeck* v. *Bullard* (1886), 80 L. T. Jo. 253; *Cremer* v. *Lowles*, [1896] 1 Q. B. 504, C. A. See also the doubt expressed by O'BRIEN, J., as to the court having such jurisdiction in the *Youghal Case* (1869), 1 O'M. & H. 291, 296.

SECT. 1. In Parliamentary Elections.

alleging, either originally or by amendment, an illegal practice may be presented, apply to cases of offences connected with the return and declarations respecting election expenses just as if they were illegal practices, and they, also, apply even though the illegal practice alleged amounts to a corrupt practice (*i*). For the purposes of these provisions, if the return and declarations are received on different days, the day on which the last of them is received is substituted for the day on which the return and declarations are received by the returning officer (*k*); and in those cases in which there is an authorised excuse for failing to make and transmit the return and declarations of election expenses the date of the allowance of the excuse, or if there has been a failure with regard to more than one of them and the excuse has been allowed at different times, the date of the allowance of the last excuse is substituted for the day on which the return and declarations are received by the returning officer (*l*). In calculating time Sundays, Christmas Day, Good Friday, and any day set apart for a public fast or thanksgiving are excluded (*m*).

When the last day for presenting a petition falls on a holiday the petition is deemed to be duly filed if put into the letter-box at the master's office at any time during such day. But an affidavit stating with reasonable precision the time when such delivery was made must be filed on the first day after the expiration of the holiday (*n*).

When return is made.

817. The "return" of a member is not made till the writ with the certificate of the returning officer indorsed thereon reaches the Clerk of the Crown so that he may act on it, and the twenty-one days do not begin to run until then (*o*).

The return respecting election expenses must be transmitted to the returning officer within thirty-five days after that on which the candidates returned at an election are declared elected (*p*).

Contents of petition.

818. An election petition must state the right of the petitioner to petition and the holding and result of the election, and, briefly, the facts and grounds relied on to sustain the prayer (*q*).

(*i*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 40 (3).

(*k*) *Ibid.*, s. 40 (4) (a).

(*l*) *Ibid.*, s. 40 (4) (b).

(*m*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 49; *Pease* v. *Norwood* (1869), L. R. 4 C. P. 235. See generally title TIME.

(*n*) Election Petition Rules, r. 72 (Additional General Rules, dated January 27th, 1875, r. 4).

(*o*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 44; *Hurdle* v. *Waring* (1874), L. R. 9 C. P. 435.

(*p*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 33 (1). As to the return of election expenses and declarations, see p. 235, *ante*. The word "transmit" means "send," and if the return is posted to the returning officer before the expiration of the thirty-five days it is in time though it may not reach him till after their expiration, and the return counts as such, even though it may contain an error as to the election expenses (*Mackinnon* v. *Clark*, [1898] 2 Q. B. 251, C. A.).

(*q*) Election Petition Rules, r. 2.

Evidence need not be stated in it (*r*). It is sufficient for the petition to allege the grounds generally, and a petition alleging that the respondent and his agents are charged with bribery, corruption, and undue influence, and, also, with illegal practices, would in form be sufficient (*s*). But a general allegation in a petition may not be so construed as, effectively, to include acts not committed until after the presentation of the petition, and if the petitioner proposes to proceed upon charges of any such acts, he must amend the petition (*t*).

Form.

The petition must be divided into paragraphs numbered consecutively, each paragraph being confined as far as possible to a distinct portion of the subject. No costs are to be allowed for the drawing or copying of a petition which does not substantially comply with this provision, unless the court or judge orders otherwise (*u*). The petition must conclude with a prayer, as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced, as the case may be (*a*).

Notice for service.

819. With the petition there must be left at the master's office a writing signed by or on behalf of the petitioner, giving the name of some person entitled to practise as a solicitor or agent in cases of

(*r*) Election Petition Rules, r. 6. As to the right to petition, see p. 411, *ante; Pontefract Case* (1893), Day, 125, 129, *per* CAVE, J.

(*s*) *Beal* v. *Smith* (1869), L. R. 4 C. P. 145; *Greenock Election Petition* (1868), reported in footnote to *Beal* v. *Smith*, *supra*, at p. 150; *Lancaster Division Case* (1896), 5 O'M. & H. 39, 41. But see in latter case, at pp. 41—42, the opinion expressed by BRUCE, J., in favour of the general character of the offences charged being set out in separate paragraphs instead of a general allegation of corrupt and illegal practices. Such a form has the advantage of not affording occasion for an order for the immediate delivery of particulars.

(*t*) *Cremer* v. *Lowles*, [1896] 1 Q. B. 504, C. A.

(*u*) Election Petition Rules, r. 3.

(*a*) *Ibid.*, r. 4.

The following form, or one to the like effect, is sufficient:—

In the King's Bench Division.

The Parliamentary Elections Act, 1868.

Election for [*state the place*] holden on the day of A.D.

The Petition of A. of [*or* of A. of , and B. of , *as the case may be*] whose names are subscribed.

1. Your petitioner A. is a person who voted [*or* had a right to vote, *as the case may be*] at the above election [*or* claims to have had a right to be returned at the above election *or* was a candidate at the above election]; and your petitioner B. [*here state in like manner the right of each petitioner*].

2. And your petitioners state that the election was holden on the day of A.D., when A. B., C. D. and E. F. were candidates, and the returning officer has returned A. B. and C. D. as being duly elected.

3. And your petitioners say that [*here state the facts and grounds on which the petitioners rely*].

Wherefore your petitioners pray that it may be determined that the said A. B. was not duly elected or returned and that the election was void [*or* that the said E. F. was duly elected and ought to have been returned, *or as the case may be*].

(Signed)

A.

B.

(Parliamentary Election Petition Rules, r. 5.)

For complete form specifying offences see Jelf, The Corrupt and Illegal Practices Prevention Acts, 3rd ed., pp. 3—15.

It is the general practice that the petition should be drawn up on parchment.

SECT. 1. In Parliamentary Elections.

election petitions whom the petitioner authorises to act as his agent, or else stating that the petitioner acts for himself, and in either case giving an address within three miles of the General Post Office, at which notices may be left. If no such writing be left or no such address be given, notice of objection to the recognisances and all other notices may be given and all proceedings may be served by sticking them up at the master's office (*b*).

Respondent.

820. The respondent is the person whose election or return the petitioner challenges or whose seat the petitioner claims (*c*). Two or more candidates may be made respondents to the same petition (*d*). If any one of the four following events happens before the trial, upon notice of the happening of such event being given, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge to be admitted as a respondent: (1) If the respondent to the petition dies; (2) if he is summoned to Parliament as a peer of Great Britain by a writ issued under the Great Seal of Great Britain; (3) if the House of Commons have resolved that his seat is vacant; (4) if he gives, in and at the prescribed manner and time, notice to the court that he does not intend to oppose the petition. Such person, on so applying, is to be admitted either with the respondent, if there be one, or in place of the respondent (*e*). Any number of persons not exceeding three may be so admitted (*f*). Whenever any one of these four events takes place notice of it must be given in the county or borough to which the petition relates (*g*), and, if the event be one of the first three enumerated, any person entitled to be a petitioner may give notice of it in the county or borough by having it published in at least one newspaper in circulation there, if there be any, and by leaving a copy of the notice signed by him or on his behalf with the returning officer, and a like copy with the master (*h*). In the event of the respondent intending not to oppose the petition he must leave written notice of his intention, signed by him, at the master's office six days before that appointed for the trial exclusive of the day on which he leaves the notice (*i*). Immediately on the notice being left at the master's office the master must send a copy of it by post to the petitioner or his agent and, also, a copy to the sheriff or mayor, as the case may be, who is to have it published in the county or borough (*k*). The application to be admitted as a respondent in any

(*b*) Election Petition Rules, r. 9. But see *Young* v. *Figgins* (1869), 19 L. T. 499, where MARTIN, B., refused to strike out a petition sought to be struck out on the ground that no such writing had been left, saying that the objection was a formal one, and so would come within r. 60 (see p. 445, *post*).

(*c*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 6 (4) (b); *Lovering* v. *Dawson* (No. 1) (1875), L. R. 10 C. P. 711.

(*d*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 22.

(*e*) *Ibid.*, s. 38. It is to be observed that the section says that a person so applying *shall* be admitted in place of a respondent, whereas the substitution of a person in place of a petitioner *may* be ordered if the court thinks fit. See p. 434, *post*.

(*f*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 38.

(*g*) *Ibid.*

(*h*) Election Petition Rules, r. 51.

(*i*) *Ibid.*, r. 52.

(*k*) *Ibid.*, r. 53.

one of these four events must be made within ten days after the prescribed notice of it is given or within such further time as the court or a judge may allow (*l*).

The giving of notice by a respondent of his intention not to oppose the petition does not of itself cause him to cease to be a respondent (*m*). But a respondent who has given such notice is not allowed to appear or act as a party against the petition in any proceedings upon it; and he must not sit or vote in the House of Commons until the House has been informed of the report on the petition. In all cases in which such notice has been given in the time and manner aforesaid, it is the duty of the court or the judges to report it to the Speaker (*n*). Any number of candidates may be made respondents to the same petition and their cases may, for the sake of convenience, be tried at the same time, but for all the purposes of the Act the petition is considered to be a separate one against each respondent (*o*). Where the ground on which the petition seeks to avoid the respondent's election applies equally to another candidate, elected at the same election, who is not a respondent to the petition, it is not a necessary condition to the hearing and determining of the petition that such other candidate should be joined as a respondent, and the court may, on the hearing of such petition, declare the respondent's election to be invalid or void (*p*). An unsuccessful candidate cannot be made a respondent to an election petition against his will (*q*).

Returning officer as respondent.

821. Where an election petition complains of the conduct of a returning officer, he will, for all the purposes of the Act, except as regards the admission of respondents in his place, be deemed to be a respondent (*r*). The allegation against the returning officer need not necessarily be one of wilful misconduct, and he may be joined as a respondent where the acts or omissions or negligences complained of are not personal but are those of his subordinates (*s*).

(*l*) Election Petition Rules, r. 54.

(*m*) *Yates* v. *Leach* (1874), L. R. 9 C. P. 605.

(*n*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 39.

(*o*) *Ibid.*, s. 22.

(*p*) *Line* v. *Warren* (1885), 14 Q. B. D. 73, 548, C. A.

(*q*) *Lovering* v. *Dawson* (No. 1) (1875), L. R. 10 C. P. 711. See also *Yates* v. *Leach* (1874), L. R. 9 C. P. 605. These cases related to municipal elections.

(*r*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 51. If it is proposed to give evidence at the hearing of an election petition to implicate the returning officer he should be made a respondent (*Tamworth Borough Case* (1869), 1 O'M. & H. 75, *per* WILLES, J.). It being proposed to offer evidence implicating the returning officer, WILLES, J., refused leave to have him called as a witness, as no charge had been made against him in the petition. Seemingly, a returning officer who is so deemed to be a respondent is entitled to the same notices as to presentation of the petition, the proposed security etc., as an ordinary respondent, see *Young* v. *Figgins* (1868), 19 L. T. 499.

(*s*) *Islington Division Case* (1901), 5 O'M. & H. 120; *Drogheda Borough Case* (1874), 2 O'M. & H. 201; *Warrington Borough Case* (1869), 1 O'M. & H. 42. But see, *contra*, *Harmon* v. *Park* (1880), 6 Q. B. D. 323, C. A.; *Cirencester Case* (1893), Day, 3. In the latter case, on a summons being taken out by a respondent for leave to serve the petition on the returning officer, MATHEW, J., refused it on the ground that it was unnecessary, as by the fact of the conduct of the returning officer being complained of he was already deemed to be a respondent under

SECT. 1. In Parliamentary Elections.

A petition complaining of an undue election or return of a member who has since died may be brought, notwithstanding his death (*a*).

Deceased respondent.

Notice of presentation.

822. Notice of the presentation of a petition and of the nature of the proposed security (*b*), accompanied by a copy of the petition, must be served on the respondent by the petitioner within five days after the presentation of the petition, exclusive of the day on which the presentation is made (*c*). Any person who has been returned as a member may, at any time after his return, send to or leave at the master's office a writing signed by him, or on his behalf, appointing a person entitled to practise as an attorney or agent in cases of election petitions to act as his agent in case a petition against him should be presented, or else stating that he intends to act for himself, and, in either case, giving an address within three miles of the General Post Office at which notices may be left. If no such writing be left at the master's office within a week after the service of the petition notices may be given and proceedings may be served by sticking them up at the master's office (*d*). Where the respondent has named an agent or given an address, the service of the election petition may be made by delivering it to the agent or by posting it in a registered letter to the address given, at such time that in the ordinary course of post

Service of notice.

s. 51 of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125). But on a summons being subsequently taken out by the returning officer for particulars of the charges against him, CAVE, J., held that he was not a party, as wilful misconduct was not alleged against him. It is submitted that the view expressed by MATHEW, J., is the correct view of the position of a returning officer against whose conduct of the election complaint is made in the petition. Compare definition of respondent (Parliamentary Elections Act, 1868, s. 6 (4) (b), *ante*, p. 416; judgment of Lord SELBORNE, L.C., in *Harmon* v. *Park* (1880), 6 Q. B. D. 323, 328, 329, C. A.; see *Davies* v. *Kensington* (*Lord*) (1874), L. R. 9 C. P. 720; *Athlone Borough Case* (1874), 2 O'M. & H. 186; *Clare Eastern Division Case* (1892), 4 O'M. & H. 162).

(*a*) *Tipperary County Case* (1875), 3 O'M. & H. 20; *Mitchell's Case* (1696), 1 Lud. E. C. 456; *Peterborough City Case* (1728), 21 Commons' Journals, p. 162; *Durham City Case* (1852), 108 Commons' Journals, 132. The reason for this is that the proceeding is not of a personal nature against a dead man, it is the assertion of a right *in rem* (*Tipperary County Case*, *supra*, *per* LAWSON, J., at p. 23).

(*b*) See p. 419, *post*.

(*c*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 8; Election Petition Rules, r. 13. Under the Corrupt Practices (Municipal Elections) Act, 1872 (35 & 36 Vict. c. 60), s. 13 (4), the wording of which is for all material purposes the same as that of s. 8 of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), it was held that the service of such notice within the prescribed time was a condition precedent to the trial of an election petition (*Williams* v. *Tenby Corporation* (1879), 5 C. P. D. 135). But compare Election Petition Rules, r. 60, *post*, and *Young* v. *Figgins* (1868), 19 L. T. 499, where, on an application by a respondent sitting member to have the petition, which contained charges against the returning officer, struck out on the ground that notice within s. 8 had not been served on the returning officer, MARTIN, B., refused the application on the ground that the objection, even if well founded, was formal, and so, in accordance with r. 60, should not be allowed to defeat the petition.

(*d*) Election Petition Rules, r. 10. The master must send on these particulars to the returning officer, who must publish them with the petition (*ibid.*, r. 12; and see pp. 415, 416, *ante*).

it would be delivered within the prescribed time (*e*). In other cases the service must be made on the respondent personally, unless a judge, on an application accompanied by an affidavit showing what has been done, makes an order, subject to such conditions as he may think reasonable, that what has been done shall be considered sufficient service. Such application must be made not later than five days after the petition has been presented, and before making such order the judge has to be satisfied that all reasonable effort has been made to effect personal service and to cause the matter to come to the knowledge of the respondent, including, when practicable, service upon an agent for election expenses (*f*). In case of evasion of service the sticking up a notice in the master's office stating that the petition has been presented, and also stating who is the petitioner, the prayer, and the nature of the proposed security, is to be considered equivalent to personal service if so ordered by a judge (*g*).

The petitioner or his agent must, immediately after notice of the presentation of a petition and of the nature of the proposed security have been served, file with the master an affidavit of the time and manner of their service (*h*).

Party's agent.

823. An agent employed for the petitioner, or respondent must forthwith leave written notice at the master's office of his appointment as agent. Service of notices and proceedings upon such agent is sufficient for all purposes (*i*).

SUB-SECT. 3.—*Security for Costs.*

Security for costs.

824. At the time of the presentation of the petition, or within three days afterwards, the petitioner must give security for all costs, charges, and expenses that may become payable by him to any person summoned as a witness on his behalf or to the respondent (*j*). The security must be to the amount of £1,000 and must be given either by recognisance or by deposit, or partly in one way and partly in the other (*k*).

Securities.

The recognisance may be entered into by any number of sureties not exceeding four (*l*), none of whom may be the petitioner or any one of the petitioners (*m*). The security need not be for more than £1,000 though there may be more than one respondent (*n*).

There may be one recognisance acknowledged by all the sureties or there may be separate recognisances by one or more of them (*o*).

It should be acknowledged before a judge at chambers or the master in town, or a justice of the peace in the country (*a*), and it

(*e*) See p. 418, *ante*.
(*f*) Election Petition Rules, r. 14.
(*g*) *Ibid.*, r. 15.
(*h*) *Ibid.*, r. 70.
(*i*) Election Petition Rules, r. 59.
(*j*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 6 (4).
(*k*) *Ibid.*, s. 6 (5).
(*l*) *Ibid.* One surety is sufficient (*Hereford City Election Petition, Preece* v. *Pulley* (1880), 49 L. J. (Q. B.) 686).
(*m*) *Pease* v. *Norwood* (1869) L. R. 4 C. P. 235.
(*n*) *Ibid.*; *Thomas* v. *Wylie* (1868), 19 L. T. 498; *Broad* v. *Fowler* (1868), *ibid.*
(*o*) Election Petition Rules, r. 18.
(*a*) *Ibid.* It was held by the master (*Young* v. *Figgins* (1868) 19 L. T. 499)

SECT. 1. In Parliamentary Elections.

must contain the name and usual place of abode of each surety with such sufficient description as shall enable him to be found or ascertained (*b*). The recognisance or recognisances must, immediately after being acknowledged, be left at the master's office by the petitioner or on his behalf in manner similar to that in which a petition is left. Where the last day of the time prescribed for filing recognisances or lists of votes or objections or any other matter required to be filed within a given time falls on a holiday, any such matter is held to be duly filed if put in the letter-box at the master's office at any time during that last day, but an affidavit stating with reasonable precision the time when such delivery was made should be filed on the first day after the expiration of the holiday (*c*). It is not necessary to stamp recognisances (*d*).

Objections to recognisances.

825. The respondent may object to a security given wholly or partially by recognisance on the ground that the sureties or any of them are insufficient, or on the ground that a surety is dead or cannot be found or ascertained through want of a sufficient description in the recognisance, or on the ground that a person named in the recognisance has not duly acknowledged it (*e*). The objection must be made in writing and notice of it must be given within five days from that on which service of the notice of the petition and of the nature of the security was made, exclusive of the day of such service (*f*). Such one or more of the above

that a recognisance acknowledged before a magistrate in town was bad. If it is acknowledged before a justice of the peace in the country he must have jurisdiction in the place where it is acknowledged (*Athlone Petition* (1868), 19 L. T. 530).

(*b*) Election Petition Rules, r. 19. The following is a form of recognisance prescribed in r. 19:—

Be it remembered that on the day of , in the year of our Lord 19 , before me [*name and description*] came A. B., of [*name and description as above prescribed*] and acknowledged himself [*or* severally acknowledged themselves] to our sovereign lord the King the sum of one thousand pounds [*or* the following sums] (that is to say) the said C. D., the sum of £ , the said E. F., the sum of £ , the said G. H., the sum of £ , and the said I. K., the sum of £ , to be levied on his [*or* their respective] goods and chattels, lands, and tenements to the use of our said sovereign lord the King, his heirs and successors.

The condition of this recognisance is that if [*here insert the names of all the petitioners, and if more than one, add*, or any of them] shall well and truly pay all costs, charges, and expenses in respect of the election petition signed by him [*or* them], relating to the [*here insert the name of the borough, or county*] which shall become payable by the said petitioner [*or* petitioners, or any of them] under the Parliamentary Elections Act, 1868, to any person or persons, then this recognisance to be void, otherwise to stand in full force.

Signed,

[*Signature of Sureties.*]

Taken and acknowledged by the above-named [*names of sureties*] on the day of at , before me,

C. D.,

A justice of the peace [*or as the case may be*].

(*c*) Election Petition Rules, r. 20. As to manner in which a petition is left, see p. 414, *ante*.

(*d*) *Athlone Petition* (1868), 19 L. T. 530.

(*e*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 8.

(*f*) Election Petition Rules, r. 21.

grounds of objection as the respondent relies upon must be stated in the notice, and in the case of a ground that any of the sureties are or is insufficient it must be stated which of them are or is so (*g*). If the objection to the security be not on any of the four grounds mentioned above, it need not necessarily be made within five days from the date of the notice of presentation of the petition and of the nature of the security, and it may be heard if in the opinion of the court it has been made within reasonable time (*h*).

Hearing of objections.

826. Any objection made to the security is heard and decided by the master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient (*i*). The hearing and decision may be either upon affidavit or personal examination of witnesses or upon both, as the master or judge may think fit (*k*). If upon the summons an order is made declaring the security sufficient, its sufficiency is held to be established; in that event, or in the event of no objection to the security being made within the time allowed for the purpose (*l*), the petition shall be at issue (*m*). But if the master or the judge makes an order allowing the objection and declaring the security insufficient, he is to state in the order what amount he considers to be requisite to make the security sufficient (*n*). The petitioner may then within five days from the date of the order, exclusive of the day on which it is made, remove the objection by depositing the amount specified in the order (*o*), but these provisions for dealing with and removing an objection made to the security apply only where the objection is one of the class specified above (*p*), and if it be not one of that class, it may be raised by an application to the court in virtue of its general jurisdiction (*q*).

Costs.

The costs of hearing and deciding objections made to the security given on the presentation of an election petition are to be paid as ordered by the master or judge, and in default of such order they are to form part of the general costs of the petition (*r*). But if the

(*g*) Election Petition Rules. r. 22.

(*h*) *Cobbett* v. *Hibbert* (1868), 19 L. T. 501. In the report of this case the objection is stated to have been on the ground of the invalidity of the security, but the precise nature of it is not mentioned. The objections mentioned in s. 8 seem to come under the generic heading of insufficiency as opposed to invalidity (see s. 9). Before the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), the matter was regulated by the Election Petitions Act, 1848 (11 & 12 Vict. c. 98), s. 13, which allowed objection to be made to a recognisance on the ground that it was invalid or that it was not duly entered into or received, or on the ground that the sureties or any of them were insufficient, or any one of the other grounds contained in s. 8 of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), and set out above. Compare *Pease* v. *Norwood* (1869), L. R. 4 C. P. 235, judgment of BOVILL, C.J., at pp. 249, 250.

(*i*) Election Petition Rules, r. 23.

(*k*) *Ibid.*, r. 24.

(*l*) See p. 420, *ante*.

(*m*) Parliamentary Elections Act, 1869 (31 & 32 Vict. c. 125), s. 9; Election Petition Rules, r. 25.

(*n*) Election Petition Rules, r. 26.

(*o*) *Ibid.*

(*p*) See p. 420, *ante*.

(*q*) *Pease* v. *Norwood*, *supra*; see note (*h*), *supra*.

(*r*) Election Petition Rules, r. 27.

SECT. 1. In Parliamentary Elections.

objection to the security be upon the ground of insufficiency of a surety or sureties, such costs are to be paid by the petitioner, and a clause to that effect is to be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognisance with the master there be also left with the master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, or before some person authorised to take affidavits in the King's Bench Division, that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognisance (*s*).

Security by deposit.

827. A deposit by way of security is made by payment into the Bank of England to an account called "The Parliamentary Elections Act, 1868, Security Fund," which is vested in the Lord Chief Justice of England (*t*) for the time being, and is drawn upon by him for the purposes for which security is required by the Act (*a*). A bank receipt or certificate for the sum deposited must be left forthwith at the master's office (*b*), which is filed by the master; and the amount together with the petition to which it relates are entered by the master in a book, which he is to keep open for the inspection of all parties concerned (*c*).

828. If Parliament is dissolved after a petition has been lodged but before the hearing of it, the court may order the security deposited by the petitioner to be returned to him (*d*).

SUB-SECT. 4.—*Interlocutory Proceedings.*

By whom tried.

829. All interlocutory questions and matters other than those relating to the sufficiency of the security (*e*) and to leave to withdraw a petition (*f*) are to be heard and disposed of before one of the judges on the rota (*g*), unless that be not practicable, in

(*s*) Election Petition Rules, r. 28. The rule expressly authorises any justice of the peace to take such an affidavit. The following is a form of affidavit prescribed in r. 28:—

In the High Court of Justice.
King's Bench Division.
Parliamentary Elections Act, 1868 (and Corrupt and Illegal Practices Prevention Acts, 1883 and 1895—according as the petition is brought under these additional Acts).

I, A. B., of [*as in recognisance*] make oath and say that I am seised or possessed of real [*or* personal] estate above what will satisfy my debts of the clear value of £ .

Sworn etc.

(*t*) By the Election Petition Rules made under the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), the fund was vested in the Chief Justice of the Common Pleas, but all jurisdiction which by the Act or the Rules was vested in the Chief Justice of the Common Pleas is now vested in the Lord Chief Justice of England (Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 25).

(*a*) Election Petition Rules, r. 16.
(*b*) *Ibid.*
(*c*) Election Petition Rules, r. 17.
(*d*) *Carter* v. *Mills* (1874), L. R. 9 C. P. 117.
(*e*) See p. 421, *ante*.
(*f*) As to withdrawal, see p. 431, *post*.
(*g*) Election Petition Rules, r. 44; *Re a Summons, Salford Petition* (1868), 19 L. T. 502.

which case, excepting matters of jurisdiction, not relating to indictments or other criminal proceedings, vested in the High Court by the Corrupt and Illegal Practices Prevention Act, 1883 (*h*), they are to be heard and disposed of before any judge at chambers (*i*). The judge who accordingly hears and disposes of such matters and questions has the same control over proceedings under the Act as a judge at chambers has in the ordinary proceedings of the Supreme Court (*k*). At least two clear days before the making of any interlocutory application or motion to the court, notice of it should be given at the Election Petitions Office and to the other side (*l*).

Particulars.

830. Such particulars as may be necessary to prevent surprise and unnecessary expense and to ensure a fair and effectual trial may be ordered by the court or a judge in the same way as in ordinary proceedings in the King's Bench Division, and upon such terms as to costs and otherwise as may be ordered (*m*). Where the allegations in the petition itself are quite general it is the practice to order immediately particulars of the nature of the alleged offences (*n*). Further particulars will be ordered of the circumstances of each charge, the order usually directing the petitioner to furnish particulars of the names of the different persons (*o*), in regard to whom the offences are alleged to have been committed, together with their addresses and numbers on the register, or, failing that, their occupation. Similarly, particulars are ordered of the persons (*p*) by whom the offences are alleged to

(*h*) 46 & 47 Vict. c. 51; As to these matters, see p. 409, *ante*.

(*i*) Election Petition Rules, r. 44. As to appeals from the judge in chambers, see title PRACTICE AND PROCEDURE.

(*k*) Election Petition Rules, r. 44.

(*l*) This is the practice. See also Day, p. 23.

(*m*) Election Petition Rules, r. 6. See, generally, title PRACTICE AND PROCEDURE.

(*n*) *Anderson* v. *Cawley* (1868), 19 L. T. 500; *Beverley Borough Case* (1869), 1 O'M. & H. 143; see *Walsall, Worcester, Stepney, Rochester* (1892), *Cirencester and Pontefract* (1893), mentioned in Day, p. 11; *Lancaster Division Case* (1896), 5 O'M. & H. 39; *Haggerston Division Case* (1896), 5 O'M. & H. 68.

(*o*) In *Maude* v. *Lowley* (1874), L. R. 9 C. P. 165, 167 (a municipal case), the court added the words "so far as known." In *Lenham* v. *Barber* (1883), 10 Q. B. D. 293 (also a municipal case), the court refused to order the words to be added, POLLOCK, B., stating that it was his practice to omit them on the ground that they might be taken to warrant undue limitation. But in *Willes* v. *Horniman* (1898), 14 T. L. R. 343, C. A., GRANTHAM, J., inserted in his order the words "if known," and the Court of Appeal refused to strike them out; A. L. SMITH, L.J., stating that if omitted in this particular case they would probably have to be read in.

(*p*) This is the uniform practice established under the Election Petition Rules, r. 6. See *Londonderry Petition* (1869), 19 L. T. 573; *Bristol Election Petition* (1870), 22 L. T. 487, 488 (in the latter case, the christian names not having been given in the particulars as delivered, an order was made for giving them); *Hastings Petition* (1869), 1 O'M. & H. 217; *Stafford Petition* (1869), 20 L. T. 180. In *Hexham Petition* (1892), Day, 14, it was held to be insufficient to give the name of a political association as being that of the person by whom the offence charged was alleged to have been committed: the particulars should specify the name of the guilty member or members (*per* CAVE, J.). In *Bradford Election Petition* (1869), 19 L. T. 661, particulars of persons bribed and treated lumped together, not saying which was which, were held sufficient, but in the *Horsham Petition* (1869), 20 L. T. 180, WILLES, J., considered that there should be separate lists of the persons bribed, treated, and unduly influenced.

SECT. 1. In Parliamentary Elections.

have been committed, as also of the time and place of the commission of each offence and of its precise character, and, in the cases of charges of bribery or treating, of its degree, will be ordered. The question of the length of time before trial in which particulars will be ordered depends on the circumstances of each case, such as the character, area, and population of the division, and the number of witnesses whom it is proposed to call (*a*); and also on the number of charges alleged in the petition (*b*).

If particulars are not delivered within the time ordered they may be struck out at the trial (*c*).

Amendment of particulars.

831. If a party wishes to give evidence of any circumstances not mentioned, or insufficiently mentioned, in his particulars, leave to amend the particulars may be asked for at the trial (*d*). The practice of the court in dealing with such an application has not been absolutely uniform, but the course generally pursued has been to allow instances not mentioned or insufficiently mentioned in the particulars to be given in evidence if the matter is substantial and if it appears that the failure to furnish the particulars or the sufficient particulars in due time has been *bonâ fide* (*e*). An affidavit

(*a*) *Rushmere* v. *Isaacson*, [1893] 1 Q. B. 118, in which case an order for delivery of particulars within seven days was, on appeal, enlarged to ten days.

(*b*) *Cirencester Case* (1893), Day, 13. In the early cases of election petitions the time allowed was generally three days (*Anderson* v. *Cawley* (1868), 19 L. T. 500; *Hill* v. *Peck* (1868), *ibid.*, 527; *Hereford Borough Case* (1869), 1 O'M. & H. 194, 196; *Beal* v. *Smith* (1869), L. R. 4 C. P. 145). Later, the time ordered was longer, usually seven days (see *Furness* v. *Beresford*, [1898] 1 Q. B. 495, C. A., *per* A. L. SMITH, L.J., at p. 498); *Oxford Election Petition, Green* v. *Hall*, [1880] W. N. 146; *Clark* v. *Wallond* (1883), 52 L. J. (Q. B.) 321; *Lenham* v. *Barber* (1883), 10 Q. B. D. 293 (a municipal case). If there are special circumstances an affidavit setting them forth ought to be filed. In *Munro* v. *Balfour*, [1893] 1 Q. B. 113, the time ordered was ten days. In the *Cirencester Case* (1893), Day, 13, the following sliding scale was adopted by CAVE, J.: ten days if charges under 80, fifteen days if charges under 160, twenty days if charges above 160. In the *St. George's Division Case* (1896), 5 O'M. & H. 89 and the *Southampton Case* (1895), 5 O'M. & H. 17, a sliding scale of ten days if charges under 80 and twelve days if over 80 was adopted. In the municipal cases of *Grimsby* and of *Shrewsbury* ((1903), Rogers on Elections, ed. 1906, Vol. II., p. 225) the scale was, in the first two, five days if the charges were not over 50; but if they were over 50, seven days; and if they were over 80, ten days. In the *Haggerston Division Case* (1896), 5 O'M. & H. 68, particulars of the general charges were ordered within seven days of the order and particulars of the specific charges within ten days of the trial. Where a charge was made against a returning officer of misconduct personal and through his deputy, stringent particulars were ordered to be delivered within six days of the order (*Crozier* v. *Rylands* (1869), 19 L. T. 572). In *Clark* v. *Wallond*, *supra* (a municipal case), the Divisional Court considered seven days the usually proper time, and refused to alter an order prescribing that time.

(*c*) *West Riding* (*Southern Division*) *Case* (1869), 1 O'M. & H. 214; but compare *Brecon Borough Case* (1869), *ibid.*, 212, where an objection made to the admission of particulars on this ground was overruled by MARTIN, B. The first-named case was one claiming a majority of legal votes and praying the seat on a scrutiny.

(*d*) But see *St. George's Division Case*, *supra*, where the application for leave to amend had been made to a judge in chambers and had been referred by him to be made to the judges at the trial. POLLOCK, B., considered the course a very inconvenient one, pointing out that an appeal would have lain from the judge at chambers to the Court of Appeal.

(*e*) This seems to be the position which may be deduced from the various cases where the point has arisen. See *Belfast Borough Petition* (1869), 19 L. T. 574, where KEOGH, J., said that parties would not be excluded from giving evidence

to that effect should be filed by the petitioner's agent (*f*). In granting leave the court will consider whether the respondent will be prejudiced by such leave, and if it is of opinion that the respondent ought to have time to be enabled to meet such evidence the court will grant an adjournment for that purpose, and the court may also in its discretion award the respondent the costs entailed by such evidence in any event (*g*). But particulars which are fishing or grossly insufficient will be struck out at the trial (*h*).

The court will not allow an amendment of particulars at the trial when such amendment really amounts to an amendment of the petition (*i*).

General corruption.

832. Where a charge of general corruption is made the particulars which are ordered are necessarily wider, and the names of particular persons alleged to have been bribed or treated will not be ordered (*k*).

of instances coming to light before the trial, as had, likewise, been the custom of the House of Commons, and the court should investigate all such cases; *Bewdley Borough Case* (1869), 1 O'M. & H. 16; *Carrickfergus Borough Case* (1869), *ibid.* 264; *Coventry Borough Case* (1869), *ibid.*, 97; *Dublin City Case* (1869), *ibid.*, 270, where KEOGH, J., said he would allow the utmost latitude to amend unless it were evident that the party had kept back information available at the time of delivery of the particulars; *Longford County Case* (1870), 2 O'M. & H. 6; *Harwich Borough Case* (1880), 3 O'M. & H. 61; *Evesham Borough Case* (1880), *ibid.*, at p. 94, where HAWKINS, J., drew attention to the fact that the court could, in its discretion, after the close of the hearing, call and examine any witness, and he said that the respondent might exercise his option, subject to such power in the court, of having the evidence of charges not included in the particulars excluded during the hearing.

(*f*) *Londonderry Borough Case* (1869), 1 O'M. & H. 274, where respondent's counsel was allowed to cross-examine petitioner's agent on his affidavit; *Cheltenham Borough Case* (1869), 1 O'M. & H. 62; *Wigan Borough Case* (1869), *ibid.*, 188, in each of which cases, the petition being part heard, MARTIN, B., said he could only allow the particulars to be amended by the addition of a name on an application by summons supported by affidavit.

(*g*) *Stafford Borough Case* (1869), 1 O'M. & H. 228, 232; *Bristol Borough Case* (1870), 2 O'M. & H. 28; *Longford County Case* (1870), 2 O'M. & H. 6; *North Durham County Case* (1874), *ibid.*, 152; *George's Case* (1870), 22 L. T. 731; *Bewdley Borough Case, supra; Hereford Borough Case* (1869), *ibid.*, 194; *Penryn Borough Case* (1869), *ibid.*, 127; *Bodmin Borough Case* (1869), *ibid.*, 117, 119, in which, however, WILLES, J. discriminated between a charge implicating a sitting member personally and a charge against his agent, saying that, in the former case, he would allow the charge to be added to the particulars, giving the respondent, if necessary, time to answer it; but, in the latter case, he would only allow the charge to be added if the fact were shown to have come to the petitioner's knowledge since the delivery of the particulars; and see *Belfast Borough Western Division Case* (1886), 4 O'M. & H. 105, 106, *per* DOWSE, B.; *Waterford Borough Case* (1870), 2 O'M. & H. 4, where notice to amend the particulars by the addition of a name during the hearing was required to be served for the following morning, when the petitioner's agent was examined on oath as to when he had first heard it (*Waterford Borough Case* (1870), *ibid.*, 25).

(*h*) *Belfast Borough Western Division Case, supra; Worcester Case* (1892), Day, 85, 87.

(*i*) *Manchester Borough Eastern Division Case* (1892), 4 O'M. & H. 120; *Montgomery Case* (1892), Day, 14; and see *Cremer* v. *Lowles*, [1896] 1 Q. B. 504, C. A., where, no amendment of the petition having been made, particulars of offences in connection with the return of election expenses, occurring after the presentation of the petition, were struck out.

(*k*) *Beverley Borough Case* (1869), 1 O'M. & H. 143; *Taunton Borough Case*

SECT. 1. In Parliamentary Elections.

But a petitioner will be ordered to specify the character and extent of the corruption alleged (*l*), and if the allegation be one of general corruption by the respondent or by his agent, the petitioner will not be allowed to give evidence of general corruption alone, but he must also prove agency (*m*).

Objections to votes.

833. Where a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, either party must, six days before that appointed for the trial, deliver to the master, and also at the address, if any, given by the other side, a list of the votes intended to be objected to and of the heads of the objection to each such vote. Inspection and office copies of such lists are allowed by the master to all parties concerned. No evidence may be given against the validity of any vote or under any head of objection not specified in the list, unless by leave of the court or the judges upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs as may be ordered (*n*).

Particulars.

In the case of such claims there is no jurisdiction in the court or the judges to order any particulars except those specified (*o*). But where a petition contains allegations upon which it claims to have the election invalidated and goes on, further, to pray a scrutiny and to claim the seat, the ordinary particulars may be ordered as to the former part of the petition, while as to the latter part thereof no further particulars than those contained in the above-mentioned list may be ordered (*p*).

Similar particulars are ordered of votes which are sought to be

(1874), 2 O'M. & H. 66; *Wigan Borough Case* (1881),4 O'M. & H. 1. But as to a distinction made between bribing and treating see last-named case, *per* GROVE, J., at p. 2, where he said that the particulars of bribery must be more specific than those of treating, as one did not bribe hosts of people generally. See also *Manchester Borough Eastern Division Case* (1892), 4 O'M. & H. 120, where under a charge of general corruption the court refused to admit evidence of treating at a certain publichouse which had not been mentioned in the particulars. In the *Hexham Case* and in the *Worcester Case* (1892), the particulars ordered were those only of time and of place (Day, 12). But see, *contra*, *King's Lynn Borough Case* (1869), 1 O'M. & H. 206, 207, where MARTIN, B., objected to receive evidence of general treating from a person who had been treated, whose name was not in the particulars, though he did not think that it was necessary to give the name of the publichouse.

(*l*) *Walsall Case* (1892), and *Pontefract Case* (1893), Day, 12.

(*m*) *Manchester Borough Eastern Division Case*, *supra*. But see opinion expressed by DENMAN, J., in *Birkbeck* v. *Bullard* (1886), 80 L. T. Jo. 253.

(*n*) Election Petition Rules, r. 7.

(*o*) *Munro* v. *Balfour*, [1893] 1 Q. B. 113; *Furness* v. *Beresford*, [1898] 1 Q. B. 495, C. A.

(*p*) *Munro* v. *Balfour*, *supra*. See also *Elkins* v. *Onslow* (1868), 19 L. T. 528, where the claim was for a scrutiny and the petition also prayed that the election might be declared null and void and that the seat should be given to the petitioner; upon the respondent's application for particulars of all acts on which the petitioner would rely for the purpose of rendering the election null and void, but which did not come within the particulars deliverable under s. 7, an order for the delivery of such particulars was made. This case was distingished from that of *Munro* v. *Balfour*, *supra*, by Lord COLERIDGE, C.J., in his judgment in the latter case, on the ground that though the claim in the Guildford petition (*Elkins* v. *Onslow*, *supra*), was for a scrutiny only, it was prayed that if in the course of the scrutiny anything should

added (*q*). Where no list of the votes intended to be objected to has been delivered within the time specified, the court has no power to extend the time nor to allow evidence of the votes objected to or of the objections thereto to be given at the trial (*r*).

Recriminatory case.

834. When the petition complains of an undue return and claims the seat for an unsuccessful candidate, the respondent may seek to prove that the election of such candidate was undue, and may call evidence to that effect in like manner as if he were petitioning against the election of such candidate (*s*). Such a case is called the recriminatory case. If the respondent proposes to call evidence in support of such a case he must, six days before that appointed for the trial, deliver to the master and also at the address, if any, given by the petitioner, a list of the objections to the election on which he intends to rely, and the master is to allow inspection and office copies of such lists to all parties concerned (*t*). No evidence may be given by a respondent of any objection not specified in the list except with leave of the court or judge, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs as may be ordered (*u*).

The aforesaid time, as also any time mentioned in any rule of court or judge's order whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial, is to be reckoned exclusively of the day of delivery, or that of doing the act ordered and the day appointed for trial, and, also, of Sunday, Christmas Day, Good Friday, and any other day set apart for a public fast or a public thanksgiving (*a*).

Recount.

835. A petition which asks for a recount (*b*) is a good petition if it claims the seat, though it asks for nothing more. If the application be granted the practice now is to order the recount to be taken before the trial (*c*).

An officer is appointed who is to take the recount; the order directing it, furthermore, generally directs that it shall be taken at the Royal Courts of Justice (*d*). The respondent's ballot papers are counted by the petitioner and are then handed to the respondent to

turn out which, if known previously, would have invalidated the election, the election should be invalidated.

The opinion expressed by WILLES, J. (*Re a Summons, Salford Petition* (1868), 19 L. T. 250), that rr. 6 and 7 should be read together is overruled by *Munro* v. *Balfour*, [1893] 1 Q. B. 113, and *Furness* v. *Beresford*, [1898] 1 Q. B. 495, C. A.

(*q*) *Horsham Petition* (1869), 20 L. T. 180; *Finsbury Case* (1892) and *Cirencester Case* (1893), Day, 16. In the *Horsham Petition, supra*, particulars of such votes were ordered to be given three days before the trial.

(*r*) *Neild* v. *Batty* (1874), L. R. 9 C. P. 104.

(*s*) Parliamentary Elections Act (1868) (31 & 32 Vict. c. 125), s. 53.

(*t*) Election Petition Rules, 8.

(*u*) *Ibid.*

(*a*) Election Petition Rules, r. 171.

(*b*) See *Renfrew County Case* (1874), 2 O'M. & H. 213, *sub nom. Irving* v. *Mure* 1 R. (Ct. of Sess.) 834; *Halifax Borough Case* (1893), 4 O'M. & H. 203; *Greenock Case* (1892), Day, 20, 21. The application for the recount should be made by summons on an affidavit showing the grounds.

(*c*) *Halifax Borough Case* (1893), 4 O'M. & H. 203.

(*d*) This is the usual practice, but in *Stepney Division Case* (1886), 4 O'M. & H. 34, 51, DENMAN, J., himself counted the ballot papers, the parties desiring that

SECT. 1. In Parliamentary Elections.

be checked by him, and those for the petitioner are similarly dealt with by the respondent. If any are disputed the opinion of the officer is sometimes asked and given, and if any paper remains disputed by either party, the officer reserves it for the decision of the court, setting it out in his report thereto. After the counted ballot papers have been thus disposed of the rejected ballot papers are dealt with in like manner.

Inspection of rejected ballot papers.

836. Inspection of rejected ballot papers in the custody of the Clerk of the Crown (*e*) may be obtained only under an order of a judge of the High Court or of the House of Commons (*f*). The order, when granted by the judge, is only to be granted upon his being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers or for the purpose of a petition questioning an election or return. Any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the House or judge making the same, may think expedient, and it is to be obeyed by the Clerk of the Crown. The order may be made by any judge at chambers (*g*), but seemingly not by the judges presiding at the trial of an election petition (*h*). Strong grounds for making it must be shown, and the judge must be satisfied that the application for it is made *bonâ fide*, and, thus, will rarely, if ever, grant it unless a petition has been instituted or is about to be instituted (*i*), and it must be shown to be really required (*k*). No one is allowed to inspect the counted ballot papers or to open the sealed packet of counterfoils without an order of the House of Commons or an order of a tribunal having cognisance of election petitions (*l*), which order may be made subject to like conditions as to persons, mode, time, and place as in the case of the order to inspect rejected ballot papers, with the provision that care is to be taken in making the order and in carrying it out that the way in which any particular elector has voted shall not be discovered until he has been proved to have voted and his vote has been declared by a competent court to be invalid (*m*).

The proper method of seeking such inspection is by application to the court or to a judge at chambers for a rule or order (*n*).

he might do so in order to save time and expense, but he stated that this was not to be a precedent. In *Renfrew County Case* (1874), 2 O'M. & H. 213, the recount took place in open court.

(*e*) See p. 329, *ante*.

(*f*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 40.

(*g*) *Ibid.*

(*h*) See *Stowe* v. *Jolliffe* (1874), L. R. 9 C. P. 446, *per* GROVE, J., at p. 456.

(*i*) *Re Darwen Division of Lancashire* (1885), 80 L. T. Jo. 153, *dubitante*, DAY, J., whether the court had any jurisdiction to make the order apart from the institution of a petition.

(*k*) *Ibid.*

(*l*) The High Court (King's Bench Division) is such a tribunal (*Stowe* v. *Jolliffe*, *supra*, *per* BRETT, J., at p. 455). Compare the judgments of GROVE and DENMAN, JJ., at pp. 458, 459. Seemingly the order cannot be made by a judge at chambers (*per* GROVE, J., at p. 456).

(*m*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 41.

(*n*) To do so by way of application for a mandamus to the Clerk of the Crown is not proper (*Stowe* v. *Joliffe*, *supra per* DENMAN J., at p. 459).

The parties may be allowed to make copies of ballot papers which, upon a recount, have been reserved for the consideration of the court (*o*).

Inspection of other documents held by Clerk of the Crown in Chancery.

837. With the exception of the ballot papers and the counterfoils, all documents forwarded by a returning officer in pursuance of the Ballot Act, 1872, to the Clerk of the Crown are open to public inspection at such time and subject to such regulations as the Clerk, with the consent of the Speaker of the House of Commons, may appoint; copies of, or extracts from, such documents are to be supplied by the Clerk to any person demanding them, on payment of such fees and subject to such regulations as the Treasury may sanction (*p*).

Notice to produce and admit.

838. Notices to produce and admit are in the ordinary form (*q*). If a notice to produce merely asks, generally, for the production of all documents relating to the matter in question, it will entitle the party giving it to the production of every document which ought to be filed and ought to be delivered to the returning officer, but it will not entitle him to the production of other specific documents unless he has named them in his notice to produce (*r*).

(*o*) *Finsbury Case* (1892), Day, 19; *Cirencester Case* (1893), *ibid.*

(*p*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 42. Where the marked register of voters, which is one of the documents open to public inspection, had been placed in a sealed packet together with the counterfoils, the court, on an application by the petitioner, made an order for the opening of the packet and the inspection of the register (*Stowe* v. *Jolliffe* (1874), L. R. 9 C. P. 446). Inspection of it on an application by a party to a petition will be ordered whether the petitioner does or does not claim a scrutiny (*James* v. *Henderson* (1874), 43 L. J. (C. P.) 238).

(*q*) See title PRACTICE AND PROCEDURE. The notice must be in writing (*Gloucestershire Case* (*temp.* 1800-1812), Orme Election Laws, p. 474). Though the form used is similar to that contained in the Appendix to the Rules of the Supreme Court, it is submitted that Ord. 31 is not applicable; see notes (*a*), (*b*), p. 430, *post*. Rules 1 and 12 thereof are, on the authority of the cases cited in the above notes, not applicable. Thus it follows that an election petition does not come within the category of any cause or matter mentioned in those two rules, or defined in the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 100. The Election Petition Rules contain no direct provision on the subject; see *Moore* v. *Kennard* (1883), 10 Q. B. D. 290. The practice of the election committees appears to have regarded a general notice as sufficient, if it indicated clearly to the party on whom it was served the particular document it called for; see *Rogers* v. *Custance* (1839), 2 Mood. & R. 179, and *Jacob* v. *Lee* (1837), *ibid.*, 33. A notice to produce "all public books, documents etc. relating to voters of the borough" was held to include the charter of the borough (*Youghal Election Case* (1838), Falc. & Fitz. 385); see *Bradford Borough Case* (1869), 1 O'M. & H. 30, 31, where MARTIN, B., said that the petitioner may call for any document in the respondent's possession, and upon being produced it becomes evidence as being a document in the respondent's possession produced by him. Notice to produce must be served so as to allow the party on whom it is served reasonable time to comply with it.

(*r*) *Westminster Borough Case* (1869), 1 O'M. & H. 89, *per* MARTIN, B., at p. 93, in which case the petitioner called for the production of certain canvassing returns, his notice to produce saying "all documents, books and papers whatsoever and in anywise relating to the matters in question in this case," which notice was held to be too general to entitle him to the production of the documents asked for. In the same case it was held (*ibid.*, at p. 94) that a party was not entitled to call for and look at generally the canvassing sheets of the other party; but in *Northallerton Borough Case* (1869), *ibid.*, 167, at pp. 168, 169,

SECT. 1. In Parliamentary Elections.

Service of notices etc.

839. Where any summons, notice or document is required to be served on any person with reference to any proceeding regarding an election for a county or borough, whether it be for the purpose of causing such person to appear before the High Court or an election court, or before election commissioners, or otherwise, or for the purpose of giving him an opportunity of making a statement or showing cause, or being heard by himself before any court or commissioners for any purpose of the Corrupt and Illegal Practices Prevention Act, 1883, such summons, notice, or document may be served either by delivering it to such person or by leaving it at his last known place of abode in such county or borough, or by sending it by post by registered letter to such place of abode, or if the proceeding is one before any court or commissioners, in any other manner which such court or commissioners may direct; and in proving such service by post it is sufficient to prove that the letter was prepaid, properly addressed and registered with the Post Office (*s*).

Copies of orders.

840. A copy of every order, excepting orders giving further time for delivering particulars or orders for costs only, and a copy of every particular delivered, is to be filed forthwith with the master, or, if he so directs, the order itself or a duplicate of it must be so filed. Such copy, order, or duplicate is to be produced at the trial by the registrar, stamped with the official seal. The order and the particulars respectively must be filed by the party who obtains the same (*t*).

No jurisdiction to order discovery.

841. Neither the court nor a judge has power to order inspection and discovery of documents (*a*), nor to make an order for the administration of interrogatories (*b*).

Evidence on commission.

842. The court or a judge has power to order a commission for the examination of a witness who is dangerously ill (*c*). If the order is made at the trial the practice is to have the examination

WILLES, J., held that a petitioner was entitled to ask for any particular entry in respondent's canvass book.

(*s*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 62 (2).

(*t*) Election Petition Rules, 69.

(*a*) *Moore* v. *Kennard* (1883), 10 Q. B. D. 290; *Coventry Petition* (1869), 19 L. T. 742, in which BLACKBURN, J., made an order for an affidavit of documents by a party to a petition; and *Stafford Petition* (1869), 20 L. T. 237, in which the same judge made an order for inspection, are overruled. In his judgment in the latter case BLACKBURN, J., stated his opinion that s. 2 of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), gave the judges power to make orders in conformity with the Common Law Procedure Acts. But it is submitted on the authority of *Moore* v. *Kennard*, *supra*, and *Wells* v. *Wren* (1880), 5 C. P. D. 546, that this is not so. As to discovery of documents in possession of a returning officer, see *Re Pembroke Urban District Council Election Petition*, [1908] 2 I. R. 158.

(*b*) *Wells* v. *Wren*, *supra*. The court also expressed much doubt as to whether the judges on the rota would have power, under s. 25 of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), to make a rule enabling the making of an order for the administration of interrogatories.

(*c*) *Staleybridge Election Petition* (1869), 19 L. T. 703; *Wells* v. *Wren*, *supra*, *per* Lord COLERIDGE, C.J., at p. 550.

taken before the registrar of the court (*d*). The shorthand writer must attend (*e*) and counsel may attend.

Withdrawal of petition.

843. An election petition may not be withdrawn without leave of the court (*f*) or of two judges (*g*), for which special application must be made (*h*). Notice in writing of the application signed by the petitioners or their agent and stating the ground on which it is proposed to support the application must be left at the master's office (*i*). If there be more than one petitioner all must consent (*k*), and all must sign the notice either by themselves or by their agent (*l*). The petitioner must give a copy of the notice to the respondent and a copy to the returning officer, who is to make it public in the county or borough to which it relates (*m*). The petitioner must publish forthwith a copy of the notice in, at least, one newspaper circulating in the place to which it relates (*n*).

(*d*) *Wallingford (Borough) Case* (1869), 1 O'M. & H. 57 ; *Montgomery Boroughs Case* (1892), 4 O'M. & H. 167, not reported on this point.

(*e*) *Ibid.*, and compare s. 24 of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), as to the taking down of the evidence at the trial by the shorthand writer.

(*f*) The court means the King's Bench Division of the High Court of Justice ; see Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 2 ; and Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 32.

(*g*) Parliamentary Elections Act, 1879 (31 & 32 Vict. c. 125), s. 38 ; Parliamentary Elections and Corrupt Practices Act, 1879 (42 & 43 Vict. c. 75), s. 2.

(*h*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 35 ; *Hartlepool Election Petition* (1869), 19 L. T. 821.

(*i*) Parliamentary Elections Act, 1868 (31 & 32 Vict, c. 125), s. 35 ; Election Petition Rules, rr. 45, 46. The following form of notice contained in r. 45 is sufficient :—

Parliamentary Elections Act, 1868.

County [*or* borough] of petition of [*state petitioners*] presented day of

The petitioner proposes to apply to withdraw his petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application.

Dated this day of

(Signed)

If the application is not made until the hearing and notice has not been given, the court may adjourn the hearing to enable the statutory notice to be given (*Hartlepool Election Petition, supra*).

(*k*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 35.

(*l*) Election Petition Rules, r. 45.

(*m*) *Ibid.*, r. 47.

(*n*) *Ibid.* The following is a form of notice contained in r. 47, setting out a copy of the notice left with the master, which may be used for the prescribed service upon the respondent and the returning officer, and for the prescribed publication :—

Parliamentary Elections Act, 1868.

In the election petition for in which is petitioner and respondent.

Notice is hereby given, that the above petitioner has on the day of lodged at the master's office notice of an application to withdraw the petition, of which notice the following is a copy—[*set it out,*]

And take notice that by the rule made by the judges any person who might have been a petitioner in respect of the said election may, within five days after publication by the returning officer of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

Notwithstanding the provisions of the Parliamentary Elections Act, 1868

SECT. 1. In Parliamentary Elections.

Affidavits necessary.

844. Before leave for the withdrawal of an election petition is granted there must be produced affidavits by all the parties to the petition and by their solicitors, as also affidavits by the election agents of all of the said parties who were candidates at the election in question. But the High Court may, on cause shown, dispense with the affidavit of any particular person if it seems to the court, on special grounds, to be just to do so (*o*). Each affidavit is to state that to the best of the deponent's knowledge and belief no agreement or terms of any kind whatsoever has or have been made and no undertaking has been entered into in relation to the withdrawal of the petition (*p*), but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit is to set forth such agreement, and it is to make the foregoing statement subject to what appears from the affidavit (*q*). The affidavit of the party applying for leave to withdraw the petition, and that of his solicitor, must each further state the ground on which the withdrawal is sought (*r*). Where there are

(31 & 32 Vict. c. 125), s. 35, and of the Election Petition Rules, rr. 45—50, cases are reported to have been "withdrawn" on an application made upon or during the hearing (see *Pembroke Boroughs Case* (1901), 5 O'M. & H. 145; *Christchurch Borough Case* (1901), *ibid.*, 147; *St. George's Division Case* (1896), *ibid.*, 116; *York City Case* (1898), *ibid.*, 118). There is nothing in the reports of these cases to show that the provisions of the above section and rules had been preliminarily complied with, and from the making of the application as reported the contrary would appear to be the case. Possibly the word "withdrawal" is not used accurately in designating what was done in these cases, and the procedure was, in fact, a dismissal of the petition on the application of the petitioner. Otherwise, it would seem that either these provisions do not apply to applications for leave to withdraw made on the hearing, or, if they do, that they were not complied with in these cases, as the reports appear to show; compare *Halifax Borough Case* (1893), 4 O'M. & H. 203. In *Pembroke Boroughs Case* (1901), 5 O'M. & H. 135, the petitioner's claim for a scrutiny depended on a question of law, which was decided against him. He thereupon asked the judges for leave to withdraw the petition. The respondent had alleged general corruption by way of a recriminatory case, which he also desired to withdraw, alleging that he had no evidence to support it. He stated that he had agreed to take £500 in lieu of costs from the respondent. The judges allowed both applications, stating that, as the petitioner would, in the ordinary course, have been liable for costs, and if the respondent had proceeded with the recriminatory case, bills of costs would have had to be exchanged, and the matter to go to taxation, the agreement as to costs seemed unobjectionable. See also *St. George's Division Case* (1896), 5 O'M & H. 87.

(*o*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 41 (1). The jurisdiction to dispense with an affidavit under this sub-section can only be exercised by a judge on the rota; see *ibid.*, s. 56 (1), p. 409, *ante*, and *Halifax Borough Case* (1893), 4 O'M. & H. 203.

(*p*) This statement is to be made subject to any agreement or other matter appearing from the affidavit; see *infra*.

(*q*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 41 (2).

(*r*) *Ibid.*, s. 41 (3). Where some of the charges alleged in an election petition, upon the hearing of which the election was avoided, applied equally to a subsequent petition respecting the other parliamentary division of the same county, and the respondent in such subsequent petition declared that he did not consider himself justified in defending the seat, so far as it was sought to be avoided on such charges, and the petitioners' counsel thereupon stated that if the respondent's counsel would consent to an order the same as that which was made with regard to the former petition he considered that he ought not to take up time by proceeding with the petition, the court desired him to proceed. The court stated that it could not sanction such an arrangement; that the decision must be based upon the evidence which might be adduced; and that the very nature of

more solicitors than one concerned for the petitioner or the respondent, whether in the capacity of agent for another solicitor or otherwise, the affidavit must be made by each such solicitor (*s*). Where a person not a solicitor is lawfully acting as agent in the case of an election petition, he is, for the purpose of making the affidavit, deemed to be a solicitor (*t*).

Director of Public Prosecutions.

Copies of the affidavits are to be delivered to the Director of Public Prosecutions a reasonable time before the application for the withdrawal is heard (*a*), and the court may hear him or his assistant or other representative (appointed with the approval of the Attorney-General) in opposition to the application, and may hear any evidence on oath which on the part of the Director of Public Prosecutions it is considered material to call (*b*).

Application for substitution of new petitioner.

Any person who might have been a petitioner (*c*) in respect of the election to which the petition relates may, on the hearing of the application for leave to withdraw the petition, apply to the court or to the judges to be substituted as a petitioner in place of the one seeking to withdraw the petition (*d*). Such person ought to give notice to the master of his intention to apply to be so substituted within five days after the publication by the returning officer of the petitioner's notice of his intention to apply for leave to withdraw his petition (*e*). The notice should be in writing and should be signed by the person proposing to apply to be so substituted or by his agent, but the failure to give the notice is not to defeat the application if it is in fact made at the hearing (*f*).

Hearing of application for withdrawal.

845. The time and place for hearing the application are fixed by a judge, and, according as he may consider advisable, it will be heard by the High Court or by two judges (*g*). The time fixed

an election petition, and the provisions of the Acts of Parliament concerning it, rendered it impossible for the court to sanction any concession which might have the effect of excluding that full disclosure of the facts which it was one of the objects of the law to provide for or of preventing that thorough investigation which the court is bound to make of all the charges relied on by the petitioner (*North Meath Case* (1892), Day, 141, 142, *per* ANDREWS, J.). In *Halifax Borough Case* (1893), 4 O'M. & H. 203, the recount having shown a majority in favour of the respondent, the petitioner sought to withdraw the petition, but the court refused leave on the ground of the insufficiency of the affidavits, saying that they must hear the petition and differentiating the case from that of *Renfrew County Case* (1874), 2 O'M. & H. 213, on the ground that in the latter case the recount took place in open court on the hearing of the petition.

(*s*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 41 (8).

(*t*) *Ibid.*, s. 41 (9).

(*a*) See *Halifax Borough Case*, *supra*.

(*b*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 41 (5); *Re Devonport Election* (1886), 2 T. L. R. 345. But the court has no power to allow him the costs of his appearance (*ibid.*; *Lichfield Division Case* (1895), 5 O'M. & H. 27, 38).

(*c*) See p. 411, *ante*.

(*d*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 35.

(*e*) Election Petition Rules, r. 48.

(*f*) *Ibid.*

(*g*) *Ibid.*, r. 49; Parliamentary Elections and Corrupt Practices Act, 1879 (42 & 43 Vict. c. 75), s. 2. In *Re Devonport Election* (1886), 2 T. L. R. 345, an application for leave to withdraw the petition was made to a Divisional Court consisting of two judges, neither of whom was on the rota.

SECT. 1. In Parliamentary Elections.

must not be less than a week after the petitioner's notice of his intention to apply for leave to withdraw his petition has been given to the master (*h*). Notice of the time and place fixed is to be given to any person who shall have given notice to the master of his intention to apply to be substituted as a petitioner, and such other notice is to be given as the judge may direct and in such manner and at such time as he may direct (*i*).

Substitution of petitioner.

The court or the judges may substitute as petitioner any person so applying to be so substituted (*k*). Moreover, if in the opinion of the court or of the judges the proposed withdrawal is induced by any corrupt bargain or consideration they may by order direct that the security given in behalf of the original petitioner shall remain as security for any costs which may be incurred by the substituted petitioner, and that to the extent of the sum mentioned in the security the original petitioner shall be liable to pay the costs of the substituted petitioner (*k*). If no such order is made, security to the same amount and subject to like conditions as would be required in the case of a new petition must be given on behalf of the substituted petitioner before he proceeds with his petition, within the prescribed time (*l*) after the order of substitution.

Public Prosecutor.

846. In giving leave for the withdrawal of a petition the court or the judges may make the leave subject to cause being shown by the Public Prosecutor, if desirable, to restore the petition, and the court or judges may, accordingly, in granting the leave reserve to the Public Prosecutor liberty to apply to the court within a specified time (*m*).

Prohibited agreements for withdrawal.

847. If any person makes any agreement or terms or enters into any undertaking in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or if such agreement, terms, or undertaking (whether lawful or unlawful) is not or are not mentioned in the aforesaid affidavits, he is guilty of a misdemeanour (*n*). Moreover, where in the opinion of the court (*o*) the proposed withdrawal was the result of any prohibited agreement, terms, or undertaking (*p*), the court has the same

(*h*) Election Petition Rules, r. 49.

(*i*) *Ibid.*

(*k*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 35.

(*l*) *Ibid.* There is no special rule prescribing any time in this case. It is submitted that as in the case of a new petition the time is limited to three days from presentation, so in the case of a substituted petitioner it is limited to three days from the order of substitution.

(*m*) *Haggerston Division Case* (1896), 5 O'M. & H. 68, 88.

(*n*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 41 (4).

(*o*) It is submitted, in view of *ibid.*, s. 41 (5), and of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 35, that the court hearing the application for leave to withdraw is meant.

(*p*) *I.e.*, prohibited by s. 41 (4) of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51).

power with respect to the security as where it is of opinion that the proposed withdrawal was induced by a corrupt consideration (*q*).

Report upon withdrawal.

848. Whenever a petition is withdrawn the court is to report to the Speaker whether in its opinion the withdrawal was the result of any agreement, terms, or undertaking, or was in consideration of any payment or of the withdrawal of any other petition or in consideration that the seat should at any time be vacated or for any other consideration, and if so, it is to state the circumstances attending the withdrawal (*r*).

Abatement on death of petitioner.

849. A petition abates by the death of a sole or of a sole surviving petitioner (*s*). The abatement is to be notified by the party or person interested in the same manner (*t*) as that in which an application to withdraw a petition is notified. Any person who might originally have been a petitioner in respect of the election in question may within one calendar month after the notice or within such further time as, upon consideration of any special circumstances, the court or a judge may allow, by moving the court or by summons before a judge at chambers, apply to be substituted as a petitioner (*a*).

Petitioner becoming member of House of Lords.

A petitioner who after the presentation becomes a member of the House of Lords may (apparently) proceed with his petition (*b*). It seems that a person who has been returned for one place is not thereby debarred from petitioning for another (*c*).

Death, or acceptance of office, by respondent.

The death of a respondent does not abate a petition (*d*). A petition drops by the fact that Parliament is dissolved while the petition is pending (*e*), but it proceeds notwithstanding a prorogation of

(*q*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 41 (6); Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 35. As to withdrawal of petition before security has been given, see Day, 9. There is no provision in the Acts for such a case, and the Acts apparently contemplate only cases where security has been given. Thus, according to Day, at p. 9, three petitions, in none of which security was found, are on the file.

(*r*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 41 (7). If it be sought to withdraw a petition, not in the prescribed manner, but by offering no evidence at the hearing, the court will make a special report to that effect to the Speaker (*Hartlepool Election Petition* (1869), 19 L. T. 821, *per* BLACKBURN, J., at p. 822).

(*s*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 37.

(*t*) See p. 431, *ante*; Election Petition Rules, r. 50. The rule does not specify the party or person interested who is to give the notice.

(*a*) *Ibid.*; Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 37.

(*b*) *Belfast Borough Case* (1842), Bar. & Aust. 553, 554, where a motion before the House of Commons for the dismissal of a petition on this ground was, after argument, dropped.

(*c*) See Orme, Election Laws, p. 261. A person petitioning for one place is capable of being selected and returned for another (21 Commons' Journals (1728), 135); apparently he must make his choice as to which of the places he will sit for as soon as the controverted return shall have been affirmed (*ibid.*).

(*d*) *Tipperary County Case* (1875), 3 O'M. & H. 19; *Ludgershall Case* (1791), House of Commons' Journals, Vol. 46, p. 411; *Dublin City Case* (1836), House of Commons' Journals, p. 364.

(*e*) *Carter* v. *Mills* (1874), L. R. 9 C. P. 117; *Marshall* v. *James* (1874), *ibid.*, 702.

SECT. 1. In Parliamentary Elections.

Parliament (*f*) or the acceptance by the respondent of an office of profit under the Crown (*g*).

Countermand of notice of trial.

850. After receiving notice of the petitioner's intention to apply for leave to withdraw the petition, or of the respondent's intention not to oppose it, or of the abatement of it by the death of the petitioner, or notice of the death of the respondent, or of his being summoned to Parliament as a peer, or of the House of Commons having resolved that his seat is vacant, if such notice be received after notice of trial has been given and before the trial has commenced, the master is forthwith to countermand the notice of trial. The countermand is to be given as nearly as possible in the same manner as the notice of trial (*h*).

Dismissal of petition.

851. A respondent may apply to have a petition dismissed (*i*); the application should be a substantive one made by motion *ad hoc* (*k*). Where a petition has been improperly presented the court will order it to be taken off the file (*l*).

Statement of petition as special case.

852. If it appears to the court upon the application, duly made (*m*), of any party to a petition that the case raised by it can be conveniently stated as a special case, the court may direct it to be so stated (*n*). The application may be made by rule in the Divisional Court (*o*) when sitting, or by summons before a judge at chambers, upon hearing the parties (*p*).

The case is stated to the Divisional Court (*q*). Only one counsel has a right to be heard on either side, though, as a matter of exceptional indulgence, the court may hear two (*r*).

(*f*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 19.

(*g*) *Ibid.*, s. 18.

(*h*) Election Petition Rules, r. 74.

(*i*) *Hackney Borough Case* (1874), 2 O'M. & H. 78. In that case a summons to have the petition dismissed was taken out, but was, after argument, dismissed. As to cases where application has been made for relief in respect of an election, after a petition relating thereto has been presented, see p. 508, *post*.

(*k*) *Stepney Case* (1892), Day, 10, *per* CAVE, J. In the *Halifax Borough Case* (1893), 4 O'M. & H. 203, a recount having already been granted, and having shown a majority of votes for the respondent, the petitioner, upon the petition coming on for hearing, applied to the election court for leave to withdraw it, which was refused, and the respondent applied for a certificate that he had been duly elected, but his application was refused. HAWKINS, J., said the court could not dismiss the petition without hearing it, and he differentiated the case from the *Renfrew County Case* (1874), 2 O'M. & H. 213, on the ground that in the latter case the petitioner had been heard, inasmuch as the recount had taken place in open court.

(*l*) *Pope* v. *Bruton* (1900), 17 T. L. R. 182 (municipal case); *Cox* v. *Davies*, [1898] 2 Q. B. 202 (rural district council case).

(*m*) See p. 459, *post*.

(*n*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (16).

(*o*) Election Petition Rules, r. 37; Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 14; R. S. C., Ord. 59, r. 1 (b).

(*p*) Election Petition Rules, r. 37.

(*q*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (16); Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 32; Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 14; R. S. C., Ord. 59, r. 1 (b).

(*r*) *Re Thornbury Division of Gloucestershire Election Petition, Ackers* v. *Howard* (1886), 16 Q. B. D. 739, 746.

Certificate of decision.

The decision of the Divisional Court on a case thus stated to it is final, unless that court gives special leave to appeal (*s*). But the Divisional Court may give such leave (*t*), and if, accordingly, an appeal be made, the decision of the Court of Appeal is final and conclusive (*a*).

The decision of the court is certified by it to the Speaker (*b*).

SUB-SECT. 5.—*The Hearing.*

Order of trial of petitions.

853. Petitions, as far as conveniently possible, are to be tried in the order in which they stand in the election list (*c*).

It is the master's duty as soon as possible to make out a list of all the petitions at issue (*d*) in the order of their presentation, and to insert in it the names of the agents of the petitioner and respondent respectively, and the addresses, if any, to which notices may be sent. The list is to be put up on a notice board at the master's office which is headed "Parliamentary Elections Act, 1868," and is reserved for proceedings thereunder. This list is called the election list, and it is open for inspection at any time during office hours (*e*). Where there are two or more petitions relating to the same election or return they are bracketed together in the list and they are to be dealt with as one petition, but they are to take their place in the list where the last of them would have stood if it had been the only petition, unless the court directs otherwise (*f*).

(*s*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (16), as amended by the Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 14; *Unwin* v. *McMullen*, [1891] 1 Q. B. 694, 699, C. A.; *Shaw* v. *Reckitt*, [1893] 1 Q. B. 779.

(*t*) *Line* v. *Warren* (1885), 14 Q. B. D. 548, C. A.; *Beresford-Hope* v. *Sandhurst* (*Lady*) (1889), 23 Q. B. D. 79, C. A.

(*a*) Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 14.

(*b*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (16).

(*c*) *Ibid.*, s. 10.

(*d*) As to when a petition is at issue, see p. 421, *ante*.

(*e*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 10; Election Petition Rules, r. 30.

(*f*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 23. As to two respondents see s. 22, and p. 416, *ante*. As to security where there is more than one respondent, see p. 419, *ante*. The effect of sections 22 and 23 seems to be that, when there are two or more petitions against the return or the election of the same person they are to be dealt with as one petition, but when there is a petition against two or more respondents, it is not to be considered as being one petition, though it is permissible to try it as against them all at the same time. Whether two petitions, of which one prays the seat while the other does not pray it, may properly be tried together seems doubtful (*Maldon Borough Petition* (1853), 2 Pow. R. & D. 143). But in *Cashel Borough Case* (1869), 1 O'M. & H. 286, where there were two petitions against the same respondent, of which one prayed the seat, FITZGERALD, B., decided that he would allow them to be opened together, but reserved his decision as to the further course. In *West Riding of Yorkshire Case* (1869), 1 O'M. & H. 213, there were two petitions, one against two respondents, which also prayed the seat, and the other, likewise, praying the seat against one of these two respondents. They appear to have been treated as two separate cases. In *Stafford Borough Case* (1869), 1 O'M. & H. 228, there were two petitions, in each of which the petitioner and the respondent were different. They were treated as two different cases, though BLACKBURN, J., at p. 232, said that he would treat the evidence in the one case as applicable to both, except where application was made to examine or

SECT. 1. In Parliamentary Elections.

Time and place of trial.

854. The time and place of the trial of an election petition are appointed by the judges on the rota (*g*). The trial of a petition relating to a borough election must take place in the borough and that of one relating to a county election in the county (*h*), unless there are special circumstances which in the opinion of the court render it desirable that the trial should be held elsewhere than in the borough or county. Should such circumstances exist the court may appoint such other place as shall appear most convenient (*i*).

When venue may be changed.

The special circumstances must be such as to render the trial of the petition elsewhere than in the borough or county to the election for which it relates not merely more convenient but more conducive to the ends of justice, and convenience or inconvenience is not in itself a special circumstance. Without such special circumstances the court has no power to change the place of trial of a petition from the borough or county to the election for which it relates (*k*). Applications for a change of venue should be made to the court and not to a judge in chambers (*l*).

Metropolitan borough.

In the case of a petition relating to a borough within the metropolitan district the petition may be heard at any place within that district which the court may appoint (*m*).

Situation of court-house.

If the building in which it is proposed to hold the trial is situated on land which does not form part of the county or of the borough, although it is within the confines of the county or of the borough, application should be made to the court for an order giving leave for the trial of the petition in such building (*n*).

Notice of time and place of trial.

855. Written notice of the appointed time and place is to be given by the master by sticking it up in his office, sending by post

re-examine witnesses. In *Poole Borough Case* (1874), 2 O'M. & H. 123, two petitions against the same respondent were heard together.

(*g*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (11); Election Petition Rules, r. 31.

(*h*) It is submitted that where a county has more than one parliamentary division the trial should be held in that division to the election for which it relates (Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), ss. 9 (3), 22). But see *Re Hexham Election Petition* (1892), *Times*, 8th November, where, on an affidavit of the under-sheriff stating that it was impossible to provide suitable accommodation at Hexham, the venue was changed to Newcastle; and see *Lawson* v. *Chester Master*, [1893] 1 Q. B. 245, where the venue was changed from Cirencester to Gloucester.

(*i*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (11); *Sligo Borough Case* (1869), 1 O'M. & H. 300.

(*k*) *Lawson* v. *Chester Master*, *supra*. In that case it was held that the fact that the point in dispute would not necessitate the calling of any witnesses and that it would be more convenient and cheaper to have the petition tried in London did not constitute special circumstances; see also *Collins* v. *Price* (1880), 5 C. P. D. 544, where the court expressed grave doubt as to whether the absence of accommodation at the place for which the election was held constituted special circumstances; but see *Re Hexham Election Petition*, *supra*, and *Arch* v. *Bentinck* (1887), 18 Q. B. D. 548.

(*l*) *Collins* v. *Price*, *supra*.

(*m*) Parliamentary Elections Act, 1868, 31 & 32 Vict. c. 125), s. 11 (11; *Re Stepney Election Petition* (1892), *Times*, 1st November.

(*n*) *Chester Case* (1880), June 23, apparently not reported on this point; *Maidstone Case* (1906), not reported on this point. Compare *Hudson* v. *Tooth* (1877), 3 Q. B. D. 46.

a copy to the address given by the petitioner and a copy to the address, if any, given by the respondent, and a copy to the sheriff, or in the case of a borough having a mayor, to the mayor, fifteen days before that appointed for the trial. The sheriff or the mayor, as the case may be, is forthwith to publish the notice in the county or borough respectively. But the sticking up of the notice at the master's office constitutes of itself due notice, and it will not be vitiated by any miscarriage of such copies or any of them (*o*). The master must also transmit to the Treasury and to the Clerk of the Crown notice of the time and place of the trial (*p*). The Clerk of the Crown must on or before the day fixed deliver the poll books to the registrar of the election court or to his deputy. If required to do so, the registrar or his deputy is to give a receipt for them, and the registrar is to keep them in safe custody till the trial is over, when he is to return them to the Crown Office (*q*).

Adjournment

856. The judges presiding at the trial of an election petition may adjourn it from place to place within the borough or county and from time to time as they may think expedient (*r*). The judges may from time to time by order made upon the application of a party to a petition or by notice in such form as they may direct to be sent to the sheriff or mayor, as the case may be, postpone the beginning of the trial to such day as they may name. On receipt of such notice the sheriff or the mayor respectively is immediately to make it public (*s*).

If the judges do not arrive at the time fixed for the trial or to which the trial has been postponed, it stands *ipso facto* adjourned to the following day and so on from day to day (*a*).

No formal adjournment of the court is necessary after the trial is begun, but the trial is to be deemed adjourned, and it is to be continued, as far as practicable, from day to day, on every lawful day, until its conclusion (*b*).

Expiration of of rota.

857. In case the year for which the election judges have been appointed has expired before the conclusion of the trial or of any of the proceedings relating to or incidental to the petition, the authority of these judges still continues for the purposes of such trial and such proceedings (*c*), and a judge before whom, whether alone or in conjunction with any other judge, any trial or other matter is pending at the expiration of the year may proceed with it and give judgment on it just as if the year for which he was appointed had not expired (*d*).

(*o*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (10); Election Petition Rules, rr. 31, 32. For form of notice of trial, see r. 33.
(*p*) Election Petition Rules, r. 62.
(*q*) *Ibid.*
(*r*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (12).
(*s*) Election Petition Rules, r. 34.
(*a*) *Ibid.*, r. 35.
(*b*) *Ibid.*, r. 36; Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 42.
(*c*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 42.
(*d*) Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 13.

SECT. 1. In Parliamentary Elections.

Disablement of judges.

858. If the judges who have begun the trial be prevented by illness or otherwise from concluding it, it may be recommenced and concluded by two other judges (*e*).

Shorthand writers.

859. The shorthand writer of the House of Commons or his deputy must attend the trial and must be sworn by the court faithfully and truly to take down the evidence, and from time to time, as occasion requires, to write it or cause it to be written in words at length. The evidence must then be taken down accordingly, and it must from time to time be written out at length, and a copy of it is to accompany the certificate made by the judges to the Speaker (*f*).

The expenses of the shorthand writer are to be treated as part of the expenses incurred in receiving the judges (*g*).

Witnesses.

860. Witnesses are subpœnaed and sworn in the same manner as nearly as circumstances admit as in a trial at Nisi Prius, and they are subject to the same penalties for perjury (*h*). A subpœna may be issued to witnesses out of the jurisdiction (*i*). On the trial the judges may, by order under their hands, compel the attendance of any person, as a witness, who appears to them to have been concerned in the election in question, and any person who refuses to obey the order is thereby guilty of contempt of court (*k*).

Committal for contempt.

In the event of its being necessary to commit any person for contempt, the warrant for committal is made out and directed to the sheriff or other person having the execution of process of the superior courts and to all constables and officers of the peace of the county or place where the person adjudged guilty of contempt may be found, and a warrant in the prescribed form (*l*) is sufficient without further particularity and is to be executed by all persons to whom it is directed (*m*).

Examination of witnesses by court.

The judges have power to examine any witness so compelled to attend or any person in court, though not called by any of the

(*e*) Election Petition Rules, r. 36. The rule was framed before the Parliamentary Elections and Corrupt Practices Act, 1879 (42 & 43 Vict. c. 75), and so only provides for the case of the disablement of the judge. But it is submitted that under it, in the event of the disablement of one of the judges, the trial should be commenced *de novo*. See *Bodmin Case* (1906), 15 O'M. & H. 225.

(*f*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 24.

(*g*) *Ibid.*; see p. 411, *ante*.

(*h*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 31. See generally title EVIDENCE, and as to perjury, title CRIMINAL LAW, Vol. IX., p. 490.

(*i*) Attendance of Witnesses Act, 1854 (17 & 18 Vict. c. 34), s. 1, amended by Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 16; *Cashel Borough Case* (1869), 1 O'M. & H. 286, 287. It is submitted that under the section as amended the power may also be exercised otherwise than on the actual trial of an election petition, that is, whether the election court is sitting or not.

(*k*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 32. This power has been exercised where witnesses have failed to attend on subpœna (*Norwich Borough Case* (1869), 1 O'M. & H. 8, *per* MARTIN, B., at p. 9; *Galway County Case* (1872), 2 O'M. & H. 48, 50, 51); and it has also been granted where a witness was stated to be evading the service of a subpœna (*Waterford Borough Case* (1870), 2 O'M. & H. 3).

(*l*) For form of such order see Election Petition Rules, r. 41

(*m*) *Ibid.*, rr. 42, 43. For form of such warrant see r. 42.

parties to the petition (*n*). After any witness has been so examined by the judges the petitioner and the respondent, or either of them, are to be at liberty to cross-examine him (*o*). Except in so far as the common law rules of evidence, practice, and procedure have been applied to election petitions in pursuance of statute or by rule, they are not, as such, binding on judges presiding at the trial of an election petition (*p*).

(*n*) *Evesham Borough Case* (1880), 3 O'M. & H. 94, 95, 96; *Montgomery Boroughs Case* (1892), 4 O'M. & H. 167, 169, 170. In the latter case POLLOCK, B., cited the *Hexham Division Case* (1892), 4 O'M. & H. 143, as an authority for a statement which he made that the court had power to call witnesses to clear up any matter that has arisen in the course of the trial, but in the *Hexham Case* the court seems to have directed the counsel for the Director of Public Prosecutions to call the witnesses. The common law does not admit of this being done; see *Re Enoch*, [1910] 1 K. B. 327. The Court appears to have discretion in the matter. As long as the parties are at arm's length it does not seem usual for the court to call—as between petitioner and respondent—a witness whom both sides have abstained from calling, though after the question between the parties has been settled this is often done; see the *Hartlepool Case* (1910), *Times*, 4th May, and compare the *Montgomery Case*, *supra*.

(*o*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 32.

(*p*) See *North Norfolk Case* (1869), 1 O'M. & H. 236, *per* BLACKBURN, J., at p. 239, and *Wells* v. *Wren* (1880), 5 C. P. D. 546, and note thereon, p. 430, *ante*, and note (*o*), p. 445, *post*; but see, *contra*, *Cheltenham Borough Case* (1869), 1 O'M. & H. 62, at p. 63, and *Bradford Borough Case* (1869), *ibid.*, 30, 31. The common law rules of evidence were, in general, observed by committees of the House of Commons in trying election petitions; but it was stated that election committees had greater latitude in questions of evidence than courts of law; see *Bedford Case* (1838), Falc. & Fitz. 429, 436. By s. 103 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), ss. 19—32 of that Act were to apply to every court of civil jurisdiction in England and Ireland. By s. 228 of the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 105 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), and s. 44 of the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), the provisions of each of these Acts, respectively, might by Order in Council be applied to any court of record in England and Wales. Apparently they never were expressly applied to election courts. On the other hand, the effect of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), was to transfer to the Court of Common Pleas (now the King's Bench Division), to which the Common Law Procedure Acts applied, the jurisdiction over election petitions. *Primâ facie*, all the sections of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), applied only to proceedings in the superior courts (*Dauber* v. *Barnes* (1862), 31 L. J. (Q. B.) 302), and the fact that they did not apply to Scotland and only in part —though that part involved the main points in procedure—to Ireland, to both of which countries the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), applies, would seem to show that they did not apply to proceedings under that Act. Sect. 2 of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), which states that the Court of Common Pleas (now the King's Bench Division) shall, subject to the provisions of the Act, have the same powers, jurisdiction, and authority with reference to an election petition and the proceedings thereon as it would have if such petition were an ordinary cause within their jurisdiction, apparently does not apply—at least, all the provisions of the Common Law Procedure Acts, for instance, s. 51 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), providing for the administration of interrogatories (see p. 430, *ante*), and s. 103 of the same Act directing the stamping of documents (see p. 452, *post*), are not applied. Yet there is nothing in the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), or the rules made under it, directed against either of these provisions, unless it be the provision in s. 26, with the qualifications therein specified, for the continuance of the procedure of the election committees; see also s. 99 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125). As to the cases, they

SECT. 1. In Parliamentary Elections.

Member of Commons may not be counsel.

861. A barrister who is also a member of the House of Commons may not appear as counsel on the trial of a parliamentary election petition (*q*).

Attendance of the Director of Public Prosecutions.

862. The Director of Public Prosecutions must attend the trial by himself, or by his assistant, or by a representative, who must be a barrister or a solicitor of not less than ten years' standing and must be nominated by him, with the approval of the Attorney-General, as his representative for this purpose (*r*). He is to obey any directions which may be given to him by the election court, with respect to the summoning and examination of any witness to give evidence at the trial, with respect to the prosecution by him of any offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice (*s*). Moreover, if it seems to the Director of Public Prosecutions, so appearing, that any person is able to give material evidence as to the subject of the trial, it becomes his duty, without any direction from the election court, to cause such person to attend the trial, and, with leave of the court, to examine such person as a witness (*t*).

Rights and duties.

The Director of Public Prosecutions has no right under the Act to cross-examine witnesses called by either party on the hearing, though he may call witnesses. He may, with leave of the court, examine witnesses called by the parties at the trial, but he ought

seem to point more to the provisions of the Common Law Procedure Acts not being binding on proceedings relating to election petitions than to their having been so binding; see *Galway County Case* (1872), 2 O'M. & H. 46, 51, 52, where KEOGH, J., admitting, on a charge of spiritual intimidation, evidence of references made outside to the trial of the petition since its opening, observed that in the *Mayo County Case* (1857), Wolf. & D. 1, the election committee had received evidence of what was passing in the county pending the very hearing of the petition, and that, except where a special alteration had been made by statute, the election court must be guided, as far as possible, by the practice of Parliament. But see, also, cases dealing with the cross-examination by a party of his own witnesses (p. 449, *post*). See note (*q*), p. 429, *ante;* and see notes (*o*), (*a*), on p. 445, *post*. In the *Maidstone Borough Case* (1906), 5 O'M. & H. 200, 202, LAWRANCE, J., said: "It is true that in election cases we have to throw overboard the rules which regulate ordinary cases, because we have to deal with peculiar circumstances." It must be remembered that the various sections of the Common Law Procedure Acts referred to in this note have been repealed.

(*q*) See *Re Kinross* (*Lord*), [1905] A. C. 468, *per* Lord JAMES, at pp. 471, 472. The objection appears to be founded on the fact that a court trying a parliamentary election petition has the duty of reporting to the House of Commons, and therefore a barrister practising before it would be practising before a tribunal of which he is a member (*ibid.*).

(*r*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 43 (1), (7).

(*s*) *Ibid.*, s. 43 (1). As to prosecutions, see p. 525, *post*. The Director of Public Prosecutions must exercise his discretion as to whether he will prosecute the offender before the election court or before some other competent court (*Ipswich Borough Case* (1886), 4 O'M. & H. 70, 75; *Belfast Borough Western Division Case* (1886), *ibid.*, 105, 109).

(*t*) *Ibid.*, s. 43 (2). But as to the examination of such person he is bound to obey the directions of the court (*Stepney Case* (1886), 4 O'M. & H. 34, *per* DENMAN, J., at p. 37). Under this section the court held that, after the evidence for the parties had been closed, it might itself call and examine additional witnesses; see *Montgomery Boroughs Case* (1892), 4 O'M. & H. 167, 169, 170.

not to ask for leave to do so without substantial cause (*u*). The intervention of the Director of Public Prosecutions on the hearing of an election petition ought to be postponed till the issue between the parties shall have been tried (*a*). It is no part of his duties to call evidence with respect to matters at issue between the parties, though if there should be, in his opinion, a collusive withholding of evidence it would be his duty to call that evidence himself (*b*). He is not concerned with the proof of agency as affecting a party to an election petition, and the court will not give him leave to cross-examine witnesses for that purpose, but he is concerned with proving to the court that the witnesses themselves have been guilty of offences (*c*).

Establishment of charges.

863. There is no obligation on petitioner's counsel to pursue charges, though there may be good foundation for them, if he has already by the establishment or admission of other charges attained the avoidance of the election (*d*).

(*u*) *Stepney Case* (1886), 4 O'M. & H. 34, *per* DENMAN, J., at p. 37; *Buckrose Division Case* (1886), *ibid.*, 110, 115.

(*a*) *Montgomery Boroughs Case* (1892), 4 O'M. & H. 167, 168. The Director of Public Prosecutions ought not to be instructed by or receive information from either side, but he may make any suggestions which he may think fit to the court (*per* POLLOCK, B., *ibid.*, at p. 168). WILLS, J., expressed an opinion that under the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 43 (1), the only duty imposed on the Director of Public Prosecutions at the trial of an election petition is to attend the court and wait until the court invites his intervention, and that no separate *locus standi* is conferred on him, but that there might be cases where witnesses were not cross-examined who, in the opinion of the court, ought, in the public interest, to be cross-examined, in which case the court would call for the intervention of the Director of Public Prosecutions (*ibid.*).

The Director of Public Prosecutions is entitled to have a copy of the respondent's return of election expenses (*ibid.*). Generally speaking, the duties of the Director of Public Prosecutions are confined to assisting the court at the conclusion of the hearing of the petition in considering whether any particular individual has been guilty of corrupt or illegal practices (*Rochester Borough Case* (1892), 4 O'M. & H. 156, 158).

(*b*) But the court ought to be very cautious in allowing such evidence to be called by him (*ibid.*, *per* CAVE, J.).

Where, after the hearing was closed and before judgment was delivered, the Director of Public Prosecutions, under the direction of the court, called a person who was said to have been bribed, and the petitioner claimed the right to cross-examine that person, he was not allowed to do so, on the ground that if he had wanted to ask the witness questions he should himself have called him (*Maidstone Borough Case* (1906), 5 O'M. & H. 200, *per* GRANTHAM, J., at p. 211); but see the *Worcester Borough Case* (1906), 5 O'M. & H. 212, where after the respondent had abandoned his opposition to the petition, the petitioner was allowed to cross-examine a witness called to show cause why he should not be reported.

(*c*) *Hexham Division Case* (1892), 4 O'M. & H. 143, *per* CAVE, J., at p. 144. See, also, *Worcester Borough Case*, *supra*.

(*d*) *North Durham County Case* (1874), 2 O'M. & H. 152, *per* BRAMWELL, B., at p. 156. The allegation of general intimidation was, on the evidence, admitted. There was also evidence of corrupt practices by an agent. BRAMWELL, B., said that if no evidence were called to rebut the latter he would have to declare the election void on both grounds. On evidence being called and petitioner's counsel stating that he did not propose to cross-examine, as he had already attained the main object of the petition, the judge said that he himself would have to do so if no one else did it, as he would have to adjudicate as to which side he believed. But in

SECT. 1.
In Parliamentary Elections.

Duties of the parties limited.

864. When the issue between the parties has been decided, there is no duty cast upon either of them to continue the inquiry in the public interests for the purposes of ascertaining to what, if any, extent corruption has prevailed in the constituency The object of the petition being gained, there is an end of the inquiry so far as the parties are concerned (*e*).

The proceedings on an election petition are judicial, not inquisitorial (*f*), and there is no duty upon the judges presiding at the trial to make inquiries, not necessary to the issue, into the general state of the constituency or into the conduct of individuals (*g*), except in so far as it would be proper for them to follow up any clue which the evidence laid before them by the parties, on the one side or the other, might furnish (*h*).

Thus, where the evidence furnishes a clue to the detection of some serious charge or as to the prevalence of corrupt or illegal practices in the constituency, the court has both the power and, speaking generally, the duty to follow the case up further, so far as it can (*i*).

another case where charges were admitted on the evidence and the respondent had withdrawn his opposition on the petitioner desiring to call further evidence to prove to the court a further state of corruption, the court said they would hear it, but that the petitioner would have to bear the cost of such evidence (*Canterbury Borough Case* (1880), 3 O'M. & H. 103). Apparently the respondent had actually withdrawn, as the court said there would be no cross-examination and that the hearing would be an *ex parte* one. DENMAN, J., thought such a hearing would not be a proper one for the court to preside over, saying that its functions were judicial and not inquisitorial, while LOPES, J., appeared to hesitate as to whether the court would have power under the Parliamentary Elections Act to entertain such a hearing.

These cases were decided before the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), which provided for the attendance of the Director of Public Prosecutions at the trial. But see *Maidstone Borough Case* (1901), 5 O'M. & H. 149, 151, where the court, stating that, in addition to the question of the avoiding of the election, it had the further duty of reporting whether or not, in the opinion of the judges, corrupt practices had extensively prevailed, suggested to petitioner's counsel that he should call further evidence on that part of the case, and also as the evidence of the respondent and his witnesses contradicted on some material points that given on behalf of the petitioner, that he should cross-examine them.

(*e*) See *per* GROVE, J., in *Wakefield Borough Case* (1874), 2 O'M. & H. 100; cited in the *Barnstaple Borough Case* (1874), 2 O'M. & H. 105, at p. 109. Compare Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 56.

(*f*) *Southampton Borough Case* (1869), 1 O'M. & H. 222, *per* WILLES, J., at p. 227; *Taunton Borough Case* (1874), 2 O'M. & H. 66, *per* GROVE, J., at p. 74; *Wakefield Borough Case*, *supra*, at pp. 103, 104; *Stroud Borough Case* (1874), *ibid.*, 107, *per* BRAMWELL, B., at p. 109; *Cheltenham Case* (1880), 3 O'M. & H. 86, *per* HAWKINS, J., at p. 88, 89.

(*g*) *Southampton Borough Case*, *per* WILLES, J., *supra*.

(*h*) *Windsor Borough Case* (1869), 1 O'M. & H. 1, *per* WILLES, J., at pp. 6, 7; *Westbury Borough Case* (1869), *ibid.*, 47, 48.

(*i*) *Monmouth Boroughs Case* (1901), 5 O'M. & H. 166, *per* KENNEDY, J., at p. 167. In the same case DARLING, J., stated his opinion that, especially seeing that as the House of Commons had recently in regard to the *Maidstone Case*, *supra* (see Parliamentary Debates, 4th Series, Vol. LXXIX., p. 874), treated as final the report of the judges that they had not reason to believe that corrupt practices had extensively prevailed, election courts ought to make full use of indications afforded by the evidence called before them, on which to base their report as to the prevalence or non-prevalence of corrupt practices, the courts being limited

SECT. 1. IN PARLIAMENTARY ELECTIONS.

Procedure.

865. The procedure on the trial is in accordance with the Acts of Parliament relating to such proceedings and the rules which have been made in pursuance of any of those Acts (*k*). So far as any such rules do not extend, the principles, practice, and rules which were observed by the House of Commons in dealing with election petitions before the passing of the Act are still to be observed so far as may be (*l*) by the court and the judges in the case of election petitions under the Act (*m*).

Proceedings not to be defeated by formal objection.

866. No proceedings upon a parliamentary election petition can be defeated by any formal objection (*n*).

Statements by parties.

867. Statements and admissions by parties to the petition are admissible in evidence against them, and the admissions of an original respondent may be given in evidence by the petitioner where the petition is being proceeded with against a substituted respondent (*o*).

Statements by voters.

Statements by voters to third parties may be given in evidence for the purpose of invalidating their votes in the event of a scrutiny, but they do not, apart from agency, constitute evidence against the opposite party (*p*). Where the question of personation is raised, declarations and admissions of the person on the poll that he is not the person on the register (*q*), or of the person on the register that he is not the person on the poll, are admissible (*a*).

to the evidence produced before them, and having only an initiative in following up any clue suggested by it—citing WILLES, J., in *Windsor Borough Case* (1869), 1 O'M. & H. 1.

(*k*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), ss. 25, 26; Parliamentary Elections and Corrupt Practices Act, 1879 (42 & 43 Vict. c. 75), s. 2; Judicature Act, 1881 (44 & 45 Vict. c. 68), ss. 13, 14; Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 56 (2). So far the only rules are those which have been made under the power given by the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 26. No rules of court regulating election petitions have been made under the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 56 (2).

(*l*) It is submitted that these words imply "considering the different natures of the tribunals."

(*m*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 26.

(*n*) Election Petition Rules, r. 60; *Young* v. *Figgins* (1868), 19 L. T. 499.

(*o*) *Tipperary County Case* (1875), 3 O'M. & H. 19, 34. It is worthy of observation that in that case it was argued for the respondent that the admission by the deceased respondent as to his nationality was not admissible, on the ground that the authority of the cases decided before the election committees was against the reception of such evidence, and that questions of evidence arising in election petitions should be decided according to such authority and not according to the ordinary law of evidence, and that KEOGH, J., decided the point in favour of the petitioner entirely on the authority of the cases decided before the election committees.

(*p*) *Windsor Borough Case* (1869), 1 O'M. & H. 1, *per* WILLES, J., at pp. 5, 6; *King's Lynn Borough Case* (1869), *ibid.*, 206, *per* MARTIN, B., at p. 208, where that judge laid down with regard to statements to third parties by a voter as to his having been bribed that in order to affect the respondent's seat it would be necessary to show that the voter had actually been bribed, not merely that he had said so; *Worcester Borough Case* (1906), 5 O'M. & H. 212.

(*q*) *Westbury Borough Case* (1869), 1 O'M. & H. 47, *per* WILLES, J., at p. 49.

(*a*) *Finsbury Central Division Case* (1892), 4 O'M. & H. 171, 173, 175. The balance of authority under the decisions of the old election committees is in favour of the admissibility in evidence of such statements by voters; see

SECT. 1. In Parliamentary Elections.

Proof of corrupt practices before agency proved.

868. On the trial of an election petition any charge of a corrupt practice may be gone into and evidence upon it may be received, unless the election court otherwise directs, before any proof has been given of agency on the part of any candidate in respect of the corrupt practice (*b*). The principle that a candidate is liable, to the extent of his election being avoided, for the corrupt acts of his agent, even though he may have expressly forbidden such acts, is one of the common law of Parliament. It follows accordingly that in order to give in evidence the commission of such acts by an agent it is

Ipswich Borough Case (1835), Kn. & Omb. 332, 387; and *Leominster Borough Case* (1796), 2 Peck. 391, 395; *Sudbury Case* (1842), Bar. & Aust. 237, 245. See also *Tipperary County Case* (1875), 3 O'M. & H. 19, *per* KEOGH, J., at p. 34. Where, for the purpose of proving treating, it was sought to give in evidence a statement by the landlady of a public-house as to the payment for beer, it was held that the landlady herself should have been called, and, though anything passing between her and the people ordering the beer would be evidence, her statement to some other person as to the payment for it was not admissible (*Bridgewater Borough Case* (1869), 1 O'M. & H. 112, *per* BLACKBURN, J., at p. 114). A conversation between a witness and a third person (the report does not state the nature of it) was objected to on the ground of its being alleged to have taken place after the poll, and the objection was allowed (*ibid.*). Evidence of a statement by a deceased person as to why he had left his employment, sought to be given for the purpose of proving that he was the respondent's agent, was rejected (*Londonderry Borough Case* (1869), 1 O'M. & H. 274, *per* O'BRIEN, J., at pp. 276, 277). Evidence of a statement by a deceased person to a creditor at time of payment of his debt as to how he had come by the money with which he paid it, sought to be adduced for the purpose of establishing agency, was allowed conditionally, its admissibility against the respondent being doubtful (*ibid.*). Evidence of a statement to a witness by his brother, who had disappeared after the election, that he had committed the alleged bribery, was received by BRAMWELL, B., though, in receiving it, he said he would not act upon it unless better evidence of the bribery were adduced (*Stroud Borough Case* (1874), 2 O'M. & H. 107, 108). A canvasser having stated in the witness-box that he had found a difficulty in getting promises of votes from a certain class, was about to state what some of that class had told him as to the reason for this; on the evidence being objected to and a submission being made that these persons should be called if the petitioners sought to prove that they had been unduly influenced, BRAMWELL, B., held that the witness might not give particulars, but that he might state, generally, if he had found a difficulty in getting promises and if he could attribute it to any cause (*North Durham County Case* (1874), 2 O'M. & H. 152, 153). A book embodying the reports of the regular canvassers kept by the witness to whom the reports have been made is not strictly admissible; the canvassers should first be called to prove their returns (*King's Lynn Borough Case* (1869), 1 O'M. & H. 206, 207). See also *Westminster Borough Case* (1869), *ibid.*, 89, 94, where a witness called for the respondent, who had been employed by a canvassing association, was asked as to the total number of promises received, with the object of showing that it was such that he, acting as respondent's agent, would have been less likely to resort to bribery. MARTIN, B., did not disallow the question, remarking "that the inference was as remote as possible, but he could not say it was not an inference." Where, in behalf of a petitioner, evidence was tendered of a conversation between a witness and certain voters with regard to their votes, on the petitioner's counsel stating that he was prepared to prove a criminal transaction between the respondent's agents and certain parties whom he had named in his opening as having been bribed, and that this evidence was tendered for the purpose of establishing such allegation, the evidence was admitted (*Nottingham 2nd Case* (1843), Bar. & Arn. 192, 195, 196).

(*b*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 17; *Guildford Borough Case* (1869), 1 O'M. & H. 13, 14; *Lichfield Borough Case* (1869), *ibid.*, 22, 23.

not necessary to prove that they were authorised or sanctioned (*c*). It is merely necessary to prove at some stage of the trial that the person committing them was an agent. The court has a discretion to admit evidence of a corrupt practice before proof of agency has been given or to insist on agency first being proved. If a case of agency has been opened by the party seeking so to give such evidence the court will generally admit evidence of a corrupt practice before proof of agency (*d*), but the evidence should not be given unless the party calling it has a reasonable expectation of being able to prove agency (*e*).

Proof of agency.

869. What constitutes agency is a question to be decided on the circumstances of each case (*f*). Statements, as distinguished from acts by an agent, are not, *primâ facie*, evidence on the hearing of an election petition against a party thereto for whom he had acted as agent at the election in question. But it may be proved that a person is such an agent as to make his statements evidence against the party for whom he has acted (*g*), and directions given by an agent may be evidence (*h*).

(*c*) *Norwich Borough Case* (1869), 1 O'M. & H. 8, *per* MARTIN, B., at p. 10; *Westbury Borough Case* (1869), *ibid.*, 47, *per* WILLES, J., at p. 52; *Staleybridge Borough Case* (1869), *ibid.*, 66, *per* BLACKBURN, J., at p. 68; *Tamworth Borough Case* (1869), *ibid.*, 75, *per* WILLES, J., at p. 81; *Taunton Borough Case* (1869), *ibid.*, 181, *per* BLACKBURN, J., at p. 182; *Taunton Borough Case* (1874), 2 O'M. & H. 66, *per* GROVE, J., at pp. 73, 74.

(*d*) *Guildford Borough Case* (1869), 1 O'M. & H. 11, *per* WILLES, J., at p. 14.

(*e*) *Bristol Borough Case* (1870), 2 O'M. & H. 27, *per* BRAMWELL, B., at p. 29.

(*f*) *Bewdley Borough Case* (1869), 1 O'M. & H. 16, *per* BLACKBURN, J., at pp. 17, 18; *Bridgewater Borough Case* (1869), *ibid.*, 112, 115, 116; *Taunton Borough Case* (1869), *ibid.*, 181, 185, 186; *Taunton Borough Case* (1874), 2 O'M. & H. 66, *per* GROVE, J., at p. 74; *Wakefield Borough Case* (1874), *ibid.*, 100, 102, 103. As to who is an agent, see p. 269, *ante*.

(*g*) *King's Lynn Borough Case* (1869), 1 O'M. & H. 206, *per* MARTIN, B., at pp. 207, 208; *Dover Borough Case* (1869), *ibid.*, 210, 211.

(*h*) But it is doubtful if evidence of a conversation after the election is admissible before proof of agency (*Waterford Borough Case* (1870), 2 O'M. & H. 1, 3); and see *Longford County Case* (1870), *ibid.*, 6, where FITZGERALD, J., at p. 12, said he would admit evidence of anything on the day of polling as an indication of what occurred during that day. But he refused to admit evidence of a statement made by an agent of the respondent twenty-six days after the election, without some evidence, in the first place, to show the continuation of his authority after the election. But see *Galway County Case* (1874), *ibid.*, 46, where KEOGH, J., at pp. 49, 50, admitted evidence of a statement made a week after the election, holding that if the maker of the statement were proved to be an agent, his subsequent declarations referring to anything which took place at the election would be on the same footing as his acts at the election. He also held that he ought to receive such evidence in view of his duty under the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (15). He appears to have held evidence of statements and acts after the election to be admissible before proof of agency. This decision seems hardly reconcilable with that of WILLES, J., in the *Bodmin Borough Case* (1869), 1 O'M. & H. 117, 118, where that learned judge held that evidence of statements by the respondent's agent after an election were not admissible. See also *Salford Borough Case* (1869), 1 O'M. & H. 133, where MARTIN, B., held that agency *primâ facie* ceases with the election; *King's Lynn Borough Case* (1869), *ibid.*, 206, *per* the same judge, and *Taunton Borough Case* (1874), 2 O'M. & H. 66, *per* GROVE, J., at pp. 67—69; *Cheltenham Borough Case* (1880), 3 O'M. & H. 86, *per*

SECT. 1. In Parliamentary Elections.

Evidence should be confined to the charges alleged in the petition (*i*).

Evidence.

870. Where the evidence as to bribery consists merely of offers or proposals to bribe, the evidence required should be stronger than that with respect to bribery itself, or where the alleged bribing is an offer of employment within the meaning of the Corrupt Practices Prevention Act, 1854 (*k*), it ought to be quite clearly made out (*l*).

Reward to witnesses.

871. It is not illegal to offer a reward for evidence (*m*).

Ordering witnesses to withdraw

872. The court may order witnesses to remain outside; even though the petition may contain charges against them (*n*), and even though these charges may be of a criminal nature (*o*).

Contradiction by witness.

873. The court will not, necessarily, discard the evidence of a witness who has signed a statement to the opposite side contrary

POLLOCK, B., and HAWKINS, J., at pp. 88, 89. In *Belfast Borough Western Division Case* (1886), 4 O'M. & H. 105, evidence, in relation to a charge of personation, of a statement made after the election, by someone whose agency the petitioner's counsel undertook to prove, was admitted by DOWSE, B., and O'BRIEN, J., though the seat was not claimed, on the ground that the election might be declared void at common law if a general consensus of personation were proved. But the court subsequently expressed the opinion that personation irrespective of agency would not avoid an election (*ibid.*, at pp. 107—109). Evidence, in relation to the charge of personation, of certain conversations before the election, was admitted before proof of agency (*ibid.*, p. 107). What is done after an election is only material as throwing light upon some transaction before it, and so leading to the supposition that there was before the election some corrupt practice (see *per* WILLES, J., in the *Southampton Borough Case* (1869), 1 O'M. & H. 222, 223; and see *Salford Borough Case* (1869), *ibid.*, 133, *per* MARTIN, B., at pp. 136—140).

(*i*) *Dudley Borough Case* (1874), 2 O'M. & H 115, *per* GROVE, J., at p. 119.

(*k*) 17 & 18 Vict. c. 102, s. 2 (2).

(*l*) *Cheltenham Borough Case* (1869), 1 O'M. & H. 62, *per* MARTIN, B., at pp. 64, 65. The learned judge said it should be established "beyond all doubt, because when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence, but one person understands what is said by another differently from what he intends it." See also *Mallow Borough Case* (1870), 2 O'M. & H. 18, *per* MORRIS, J., at p. 22. Though the charges in a petition may not have been sufficiently established to call for an answer to them from the other side, the court may, in its discretion, refrain from ruling them out or dismissing them, until the party alleging them shall have had an opportunity of proving them by the cross-examination of the witnesses on the other side (*Montgomery Boroughs Case* (1892), 4 O'M. & H. 167, 169).

(*m*) *Mallow Borough Case, supra.* But, the offering of very large sums in small constituencies is very objectionable (*ibid., per* MORRIS, J.). The interviewing, during the course of the trial, of witnesses who are waiting to be called by the opposite side is most reprehensible (*Wigan Borough Case* (1881), 4 O'M. & H. 1, *per* BOWEN and GROVE, JJ., at p. 5).

(*n*) *Montgomery Boroughs Case, supra.* But, though other witnesses, against whom charges are made, be ordered out of court, the respondent's election agent may be allowed to remain (*Knaresborough Borough Case* (1880), 3 O'M. & H. 141, 142). The respondent's counsel had asked that the election agent might be allowed to remain in court in order that he might receive instructions from him for cross-examination, and LUSH, J., in granting leave, likened the position of the election agent to that of a solicitor.

(*o*) *Maidstone Borough Case* (1906), 5 O'M. & H. 200, 201.

to what he had originally said, as his evidence may be corroborated by circumstances so as to lead the court to believe it, or his demeanour may give credibility to his evidence (*a*).

Cross-examination.

874. The court will allow a party to cross-examine his own witness if, in the opinion of the court, the witness is hostile (*b*), and where the witness may be cross-examined the party may, further, call evidence to contradict him (*c*).

Secrecy of vote.

875. A witness may not be required to disclose for whom he has voted (*d*), and it is only in those cases where he has publicly held himself out as belonging to some political party that he may be asked to which party he belongs (*e*).

(*a*) *Wigan Borough Case* (1881), 4 O'M. & H. 1, *per* GROVE, J., at p. 5. That persons who have been, or are likely to be, subpœnaed by one side should be got by the other side to make statements or to sign already prepared statements, is most reprehensible (*ibid.*; *Montgomery Boroughs* (1892) Day, 150; *Maidstone Borough Case* (1906), 5 O'M. & H. 200, 201, 202; *Worcester Borough Case* (1906), Day, 214).

(*b*) *Coventry Borough Case* (1869), 1 O'M. & H. 97, *per* WILLES, J., at p. 104; and see note (*p*) on p. 441, *ante*.

(*c*) *Ibid.*; *Lichfield Borough Case* (1869), *ibid.*, 22, *per* WILLES, J., at p. 24. But see, *contra*, *Bridgewater Borough Case* (1869), *ibid.*, 112, *per* BLACKBURN, J., at p. 114. In *Bewdley Borough Case* (1869), *ibid.*, 16, 17, the same judge allowed a leading question to be put to a witness by the party calling him, observing, at the same time, that the rule was that a previous statement by a witness differing from what he stated on oath in court might be proved to shake his evidence, but could not be used as evidence in chief. In that case the previous statement by the witness had been taken down in writing, and he stated in court that he did not remember the substance of it. As to whether the hostility which occasions the leave must be shown on the trial itself, or may be deduced from inconsistency with a previous statement by means of the consideration by the court of such previous statement, see *Bradford Borough Case* (1869),1 O'M. & H. 30, 31, where MARTIN, B., disallowed a question as to the making of such previous statement, put by a party to his own witness, with a view to supplying evidence upon which the court might consider the witness to be hostile. The judge ruled that when he (the judge) saw that the witness was hostile he would deal with him accordingly, but, meanwhile, he saw nothing adverse in him. The cases at Nisi Prius on the point are not very clear. See title EVIDENCE.

As to the practice followed by election committees, see *Nottingham 2nd Case* (1843), Bar. & Arn. 192, 196, 197, where, on a witness failing to give the evidence expected by the party calling him, that party was allowed to ask him if he had been intimidated. In the *Leicester Borough Case*, (1853) Report of Select Committee, Minutes of Evidence, p. 52, the petitioner's counsel, on objection having been taken to his calling evidence contradicting that of one of his own witnesses, asked the chairman if the committee had ruled that petitioners might not call a witness to contradict another whom they had called to prove their case; the chairman intimated to him that, in the peculiar circumstances of that particular case, he could not see how the inquiry could proceed without an opportunity being given of testing the character of the witnesses who had been called; accordingly he was allowed to call such evidence. But see *Cockermouth Case* (1853), Report of Select Committee, Minutes of Evidence, p. 100, where it was resolved that evidence, which the petitioners sought to obtain from one of their witnesses, of an admission by a previous witness called by them that he had been bribed was not admissible. But where the evidence which a party sought to call in contradiction of one of his own witnesses was on a point in itself material and he sought to call such evidence in order to establish that point, the evidence was admitted (*Bury Borough Case* (1859), Wolf. & B. 40, 41; *Kingston-upon-Hull Borough Case* (1859), *ibid.*, 84, 85).

(*d*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 12.

(*e*) *North Durham County Case* (1874), 3 O'M. & H. 1, *per* GROVE, J.; followed in *Harwich Borough Case* (1880), *ibid.*, 61, at pp. 63, 64.

SECT. 1. In Parliamentary Elections.

The court may not discover how a person who has voted has given his vote till it has been declared to be void (*f*).

Witness not excused from answering on ground of privilege etc.

876. A person who is called as a witness respecting an election before any election court is not excused from answering any question relating to any offence at, or connected with, such election on the ground that the answer may criminate him or may tend to do so (*g*). Furthermore, he may not refuse to answer any such question on the ground of privilege (*h*). But if he answers truly all questions which the election court requires him to answer, he will be entitled to a certificate of indemnity, under the hand of a member of the court, stating that the witness has so answered (*i*). In order to be entitled to receive a certificate of indemnity a person must have been called as a witness before the election court, but he need not have been called as a witness in respect of the issue of the validity or invalidity of the election; and he may be entitled to a certificate even though when he is called that issue is no longer before the court (*k*). But, it is submitted, he must be a witness giving evidence on matters as to which the court requires evidence (*a*). Thus, it is submitted, a person who merely comes forward because, during the hearing of the petition, charges were made against him, to show cause why he should not be reported, even though he give evidence admitting the facts charged on the hearing of the petition, is not a witness, who, on answering truthfully, becomes entitled to a certificate (*b*). Moreover, an answer by a person to a question put by or before an election court is not admissible in evidence against him in any civil or criminal proceeding, except in any criminal proceeding for perjury in respect

(*f*) See Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 41; *Stepney Case* (1886), 4 O'M. & H. 34, 36. But where, on a scrutiny, the vote of a certain person had been declared bad, but, two ballot papers being found to have the same number, it was impossible to say which was the one that had been marked by such person, it was decided that both might be shown to him so that he might say which was his (*Finsbury Central Division Case* (1892), 4 O'M. & H. 171, 176).

(*g*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 59 (1).

(*h*) *Ibid.*

(*i*) *Ibid.*, s. 59 (1) (a); *Maidstone Borough Case* (1901), 5 O'M. & H. 149, 152. A respondent and his election agent may receive certificates of indemnity if they have been called as witnesses and have answered truly all questions (*Barrow-in-Furness Borough Case* (1886), 4 O'M. & H. 76, 83). If he truly answers all questions of fact, he may possibly have his certificate, though the court does not think he has correctly stated his intention or as to whether he knew what he did was wrong, as persons sometimes persuade themselves that they are speaking the truth in such matters. The commissioner in the *Pontefract Case* (municipal) (1910), unreported, so held, but there appears to be no authority on the subject.

(*k*) *Maidstone Borough Case, supra.*

(*a*) *Worcester Borough Case* (1906), 5 O'M. & H. 215.

(*b*) *Ibid.* But see the *Monmouth Boroughs Case* (1901), 5 O'M. & H., 166, 175. Where breaches of the Ballot Act were charged against a presiding officer and his subordinates, the court, being satisfied that they had spoken the truth and being anxious to give them protection, granted them certificates of indemnity. In doing so, however, KENNEDY, J., mentioned that such certificates applied only to offences under the Corrupt Practices Acts (*Islington West Division Case* (1901), 5 O'M. & H. 120, 134).

of such answer (*c*). No witness may be asked any question for the purpose of proving the commission of any corrupt practice at or in relation to any election held prior to the passing of the Corrupt and Illegal Practices Prevention Act, 1883 (*d*), nor, if he should be asked any such question, is he bound to answer it (*e*).

If a person has received such a certificate of indemnity in relation to an election and any legal proceeding is at any time instituted against him for any offence under the Corrupt and Illegal Practices Prevention Acts (*f*) committed by him at or in relation to the said election previously to the date of such certificate, the court which has cognisance of the case is to stay such proceeding on proof of such certificate, and the court may, also, in its discretion, award such person the costs to which he may have been put in the proceeding (*g*).

Nothing in the foregoing provisions (*h*) relieves a person who has received a certificate of indemnity from any incapacity under the Act or from any proceeding to enforce such incapacity (other than a criminal prosecution (*i*)). The provisions also apply equally to the cases of witnesses before election commissioners (*k*).

Respondent as witness.

877. When a respondent sitting member is called as a witness on the trial of an election petition, he ought to be allowed to make any statement which he may think proper (*l*).

When the respondent, on the hearing of the petition, abandons

(*c*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 59 (1) (b).

(*d*) The date of the passing of the Act was August 25th, 1883.

(*e*) Corrupt and Illegal Practices Act, 1883 (46 & 47 Vict. c. 51), s. 49. But where a witness was asked in cross-examination if he was the person who had been reported by the Election Commissioners for corruptly treating voters, DENMAN, J., considered that the section did not forbid the witness being asked whether he was the same person. The point as to whether a witness may be asked or will be bound to answer questions seeking to show that he has been guilty of an offence at a previous election held subsequently to the passing of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), seems never to have been directly decided. It is submitted that if he has been convicted of such an offence the Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 6, will apply, and that, accordingly, if the witness denies or does not admit the conviction or refuses to answer the question, the cross-examining party may prove the conviction. This section of the Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), is, by s. 1 thereof, made applicable to all courts of judicature as well criminal as all others, and to all persons having, by law or by consent of parties, authority to hear, receive, and examine evidence. Otherwise, it is submitted that the authority is against the admission of evidence of corrupt practices at previous elections (*Windsor Election Petition* (1869), 19 L. T. 613, *per* WILLES, J., at p. 615; *Taunton Borough Case* (1874), 2 O'M. & H. 66, *per* GROVE, J., at pp. 70, 71), unless such practices are connected with the election actually in question (*Galway Borough Case* (1869), 1 O'M. & H. 303, 304; *Windsor Borough Case* (1874), 2 O'M. & H. 88, 90, 91; *Poole Borough Case* (1874), *ibid.*, 123, 124, 125).

(*f*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 65 (1), and Sched. III.

(*g*) *Ibid.*, s. 59 (2).

(*h*) *I.e.*, the provisions of s. 59 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51).

(*i*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 59 (3).

(*k*) *Ibid.*, s. 59 (4).

(*l*) *Tamworth Borough Case* (1869), 1 O'M. & H. 75, *per* WILLES, J., at p. 77.

SECT. 1. In Parliamentary Elections.

his defence of the seat, it is the general practice that no one shall be allowed to give evidence in exculpation of any charges made against himself except the respondent (*m*). It is the practice in such cases to allow the respondent to give evidence in his own exculpation (*n*).

Production of documents.

878. Where an order is made for the production by the Clerk of the Crown of any document in his possession relating to any specified election, the production by the Clerk or by his agent of the document ordered, in such manner as may be directed by such order or by a rule of the court having power to make such order, is conclusive evidence that such document relates to the specified election (*o*). Any indorsement appearing on any packet of ballot papers produced by the Clerk or his agent is evidence of such papers being what the indorsement states them to be (*p*).

Production of telegrams by Post Office.

879. The court will make an order for the production by the Post Office of all telegrams sent during the period of an election, if requested so to do (*q*).

Documents need not be stamped.

880. Documents need not be stamped in order to be put in evidence on the trial of an election petition (*r*).

(*m*) *Knaresborough Borough Case* (1880), 3 O'M. & H. 141, 142—144; *Boston Borough Case, ibid.*, 150. But see *Wigan Borough Case* (1881), 4 O'M. & H. 1, 7, where members of a firm of solicitors who had acted as agents for the respondent were allowed to give evidence in personal exculpation. As to persons being heard before being reported by the court as guilty of corrupt or illegal practices, see p. 462, *post*.

(*n*) *Knaresborough Borough Case, supra; Boston Borough Case, supra.* But as to the right of persons to be heard before being reported by the judges, see p. 462, *post*.

(*o*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 43.

(*p*) *Ibid.* As to the inspection of the return and declarations respecting election expenses and of the documents which accompany them, see p. 429, *ante*.

(*q*) *Harwich Borough Case* (1880), 3 O'M. & H. 60, 63. But MANISTY, J., was of opinion that if the production were requested for the purpose of ascertaining how anyone had voted, the Post Office might refuse production, on the ground that it would be a violation of the Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 12. It is submitted, however, that inasmuch as that section only says that no person who has voted at an election is, in any legal proceeding questioning the election or return, to be required to state for whom he himself has voted, it does not seem to cover the case of the Post Office being asked to produce telegrams, and the opinion of LUSH, J., the other member of the court, would seem to have been that that would be a question to be decided by the court when the telegrams should have been shown to it, but would not be an argument against their production by the Post Office (*ibid.*, at p. 62). The court made an order for the production of all telegrams which were sent from Harwich Post Office from March 8th up to and inclusive of April 2nd. (The latter date was that on which the writ for the election was returnable; it was issued on March 24th.) The *Taunton Borough Case* (1874), 2 O'M. & H. 66, 72, and the *Stroud Borough Case* (1874), *ibid.*, 107, 110, are, accordingly, overruled. LUSH, J., in the *Harwich Borough Case, supra*, at p. 63, considered that they had been already overruled by the decision in the *Bolton Borough Case* (1874), 2 O'M. & H. 138, 140; but in that case the receiver had been called as a witness, and the contents of the telegram had already been disclosed, and the court in fact only decided that, under such circumstances, the original should be produced when called for. Before telegraphy was taken over by the Post Office the right to call for production by the telegraph company of telegrams seems to have been clear (*Harwich Borough Case, supra, per* LUSH, J., at p. 63; *Coventry Borough Case* (1869), 1 O'M. & H. 97, 101).

(*r*) *Windsor Borough Case* (1869), 1 O'M. & H. 1, 6. WILLES, J., stated the

881. A party may not call for the production of entries of payments contained in the books of the other side, which are not connected with payments to persons or payments at dates alleged in the particulars furnished by the party calling for such production (*s*).

When recriminatory evidence may be offered.

882. If the seat is not prayed the respondent may not call recriminatory evidence (*a*). In such cases the respondent may not give evidence as to the election expenses of an unsuccessful candidate, and may not set up such evidence by cross-examination (*b*). Where the seat is prayed recriminatory evidence may be offered against the person for whom it is prayed, whether he be or be not a party to the petition (*c*).

When charges in it may be alleged against a subsequent election.

If a recriminatory case is abandoned owing to the petitioner abandoning his claim to the seat, and if the matters alleged in the recriminatory case are such as would disqualify the petitioner on a subsequent election, but, owing to the abandonment of the claim for the seat, they are not tried or in any way adjudicated by the court, these matters, it is submitted, may be alleged in a petition against such subsequent election (*d*).

Where the petition prays the seat recriminatory evidence may, it is submitted, be offered notwithstanding that the prayer for the seat is abandoned at the trial (*e*).

reason why such documents did not require a stamp was that the proceedings were of a *quasi*-criminal nature. As to documents not requiring to be stamped in order to be available in criminal proceedings, see title EVIDENCE.

(*s*) *Maidstone Borough Case* (1906), 5 O'M. & H. 200, *per* GRANTHAM, J., at p. 205. See p. 429, *ante*, as to notice to produce.

Where the treasurer of a political association was subpœnaed to produce all books in his possession showing the expenditure of the association during the month in which the election was held and the preceding month, the paying-in book, passbook and counterfoils being also called for, respondent's counsel objected to their being seen by the petitioner's agent, or by anyone on his side, except counsel, on the ground that the books might contain references to political work, and the objection was upheld (*Maidstone Borough Case, supra*, at p. 204).

(*a*) *Blackburn Borough Case* (1869), 1 O'M. & H. 198, 199; *Gravesend Borough Case* (1880), 3 O'M. & H. 81, *per* DENMAN and LOPES, JJ., at pp. 82, 83.

(*b*) *North Durham County Case* (1874), 2 O'M. & H. 152, *per* BRAMWELL, B., at p. 154; followed in *Thirsk Borough Case* (1880), 3 O'M. & H. 113, *per* DENMAN, J.

(*c*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 53.

(*d*) *Stevens* v. *Tillett* (1870), L. R. 6 C. P. 147; *Gravesend Borough Case* (1880), 3 O'M. & H. 81, *per* LOPES and DENMAN, JJ., at pp. 82, 83. But see doubt expressed by WILLES, J. (*Stevens* v. *Tillett, supra*, at p. 171), whether, if such matters were known to the respondent in the former petition, so as to have been capable of being offered in evidence on the recriminatory case, and were not so offered, they might be alleged in the petition against the subsequent election. In that case, however, it is to be observed, the recriminatory case had been opened, and three of the charges made in it having failed, it was abandoned before the claim to the seat was abandoned.

(*e*) The authority of the cases before the election committees supports the submission (*Coventry City etc. Case* (1803), 1 Peck. 93, 99; *New Windsor Borough Case* (1804), 2 Peck. 187, where the point was argued at considerable length on either side; *Clare County Case* (1860), Wolf. & B. 138, 143; see also *Aldridge* v. *Hurst* (1876), 1 C. P. D. 410, where these cases were reviewed by the Court of Common Pleas in its judgment, given by GROVE, J., at p. 416.

SECT. 1. In Parliamentary Elections.

Scrutiny.

The general practice is to take the recriminatory case before the scrutiny (*f*).

883. The object of a scrutiny is to ascertain who has had the majority of legal votes. A respondent whose election is proved to be void may still continue the scrutiny, with the object of showing that the person for whom the seat is claimed has not obtained a majority of lawful votes (*g*). Similarly, if a petitioner be proved on the hearing of an election petition to be not qualified for election, he may still proceed with the scrutiny in order to show that the respondent had not received a majority of lawful votes and so was not duly elected (*h*).

Evidence of vote registered.

884. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, is *primâ facie* evidence that the person who voted by such ballot paper was the person who, at the time of the election, was marked on the register of voters at the election with the same number as that written on the counterfoil (*i*).

Objections to votes on scrutiny.

A party to a scrutiny is bound by his particulars. He may not attack votes set out in the other party's particulars which are not set out in his own particulars, and with the objection to which the other party does not proceed. But leave to give evidence as to such votes may be given by the court upon good grounds being shown by affidavit, the court making such terms as it thinks right to meet such case (*k*).

In the last-named case the court refused to allow a petitioner to amend his petition by striking out the prayer for the seat, one of the reasons for so refusing being that, otherwise, the right of giving recriminatory evidence would be lost to the respondent. The court pointed out that the petitioner might give notice to the respondent of his intention not to claim the seat, so as to enable the latter to avoid the costs of meeting such a claim without, on the other hand, preventing the possibility of recriminatory evidence being given. Thus, it is submitted, in the opinion of the court the abandonment of the claim at the trial would not preclude the offering of such evidence. But see *Gravesend Borough Case* (1880), 3 O'M. & H. 81, where a grave doubt was expressed by the court (DENMAN and LOPES, JJ.) as to whether, when the claim for the seat had been abandoned (with the consent of the respondent and of the court) the respondent might proceed with the recriminatory case.

(*f*) *Southampton Borough Case* (1869), 1 O'M. & H. 222, 225, following *Northallerton Borough Case* (1869), *ibid.*, 167. But where there are special reasons making it desirable to take the scrutiny before the recriminatory case, that may be done (*Stepney Case* (1886), 4 O'M. & H. 34, 35; *West Riding Southern Division Case* (1869), 1 O'M. & H. 213, 214; *Petersfield Borough Case* (1874), 2 O'M. & H. 94, 95; *St. George's Division Case* (1896), 5 O'M. & H. 89).

(*g*) *Norwich Election Petition* (1869), 19 L. T. 615, *per* MARTIN, B., at pp. 620, 621.

(*h*) *Southampton Borough Case, supra, per* WILLES, J., at pp. 225, 226; *West Riding Southern Division Case* (1869), *ibid.*, 213, *per* MARTIN, B., at pp. 215, 216; *Taunton Borough Case* (1869), *ibid.*, 181, 186. Apparently, also, if a respondent fails on the principal case and succeeds on the recriminatory case, he may still proceed with the scrutiny (*Southampton Borough Case, supra, per* WILLES, J., at pp. 225, 226).

(*i*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 43.

(*k*) *Finsbury Central Division Case* (1892), 4 O'M. & H. 171, 173, 174.

885. If the result of the scrutiny is the finding of an equality of votes given for the different candidates the election is rendered void (*l*).

When equal number of votes.

886. The register is conclusive upon all tribunals inquiring into elections as to the qualification of voters inserted upon it, excepting only persons who are prohibited from voting by any statute or by the common law of Parliament (*m*).

Conclusiveness of register.

Votes are struck off when the voter is proved to have been personated (*n*), or to have been bribed (*o*), or treated (*p*), or unduly

Striking off votes.

(*l*) *Cirencester Division Case* (1893), 4 O'M. & H. 194, 199.

(*m*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 79. The provisoes to the section are repealed by the Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. IV.; Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 7; *Stowe* v. *Jolliffe* (1874), L. R. 9 C. P. 734. The incapacitation of the persons excepted is not that of persons who, from failure in the incidents or elements of the franchise, could be successfully objected to on the revision of the register, but that of persons who, from some inherent or, for the time, irremovable quality in themselves, have not, owing to statutory or common law prohibition, the status of parliamentary electors (*ibid.*, *per* Lord COLERIDGE, C.J., at p. 750; *Londonderry City Case* (1886), 4 O'M. & H. 96; *Pembroke Boroughs Case* (1901), 5 O'M. & H. 135).

As to persons personally incapacitated from voting, and therefore coming within the exception constituted by the proviso in s. 9 of the Ballot Act, 1872 (35 & 36 Vict. c. 33), see p. 140, *ante*.

The decision of BLACKBURN, J., in the *Oldham Borough Case* (1869), 1 O'M. & H. 151, at p. 159, that the votes of infants and aliens, whose names had been admitted on the register, could not be struck off unless an objection to them had been first taken before the revising barrister (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 98, repealed by the Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. IV.) is not now law. See *Re Stepney Election Petition*, *Isaacson* v. *Durant* (1886), 17 Q. B. D. 54. Where an alien named Peter Sterckx carried on business with his son, who was not an alien, under the name of Peter Sterckx & Son, the lease of the business premises being in the son's name, Joseph Peter Sterckx, commonly called Peter Sterckx, and the name on the register was Peter Sterckx of the said premises, the son having voted, the court held the vote good, construing the position to be that the overseers had placed the son's name on the register, as that position, and that alone, was consistent with the overseers having done their duty, the father being an alien and, consequently, not entitled to vote (*Finsbury Central Division Case* (1892), 4 O'M. & H. 171, 172, 173).

The conclusiveness of the register does not extend to maintaining the vote of a person who is, incorrectly, registered as entitled to a vote in two separate divisions of a borough, in respect of an election in each of these two divisions. As to provisions for cases of double entries in boroughs, see Registration Act, 1885 (48 & 49 Vict. c. 15), s. 5; Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), s. 8 (3), p. 234, *ante*. Where, in such circumstances, it appears, on a scrutiny, that a voter has voted in each of such divisions, if he has done so honestly and believing that he was entitled to do so, and if he voted first in that division for which he was registered in respect of his place of abode, or in which his abode actually is if he is not registered in respect of his abode for either division, such first vote will be held good but the second will be disallowed (*Stepney Case* (1886), 4 O'M. & H. 34, 43—49; *Finsbury Central Division Case*, *supra*, at pp. 174, 175).

(*n*) *Oldham Borough Case* (1869), 1 O'M. & H. 151, 152; *Gloucester Borough Case* (1873), 2 O'M. & H. 59, 64; *Finsbury Central Division Case*, *supra*. Personation, to be an offence, must be committed corruptly (*Stepney Case*, *supra*; *Oldham Borough Case*, *supra*, at p. 152; *Gloucester Borough Case*, *supra*, at p. 64). If a person has been passing under a name which is not his real name, and is placed on the register in such name by the overseers, he does not

(*o*), (*p*). For notes (*o*) and (*p*), see next page.

SECT. 1. In Parliamentary Elections.

influenced (*q*), or on the ground of the voter having been retained, hired, or employed for all or any of the purposes of the election, for reward, by or on behalf of any candidate at such election as agent, canvasser, clerk, messenger, or in other like employment, during the election or during the preceding six months (*r*).

Method of striking off.

887. Where a person who has been a candidate at an election, on the trial of a petition claiming the seat for any person in respect of that election, is proved to have been guilty, whether by himself or by anybody on his behalf, of bribery, treating, or undue influence with regard to any person who voted at such election, one vote is, on a scrutiny, to be struck off for each such voter from the number of votes given to such candidate (*s*).

commit the offence of personation by voting in such name (*R.* v. *Fox* (1887), 16 Cox, C. C. 166). A misdescription, whether of name or of place, does not invalidate the vote of the person so misdescribed, if he is the person whom the overseers intended to place on the register (*Oldham Borough Case* (1869), 1 O'M. & H. 151, 153, 154; *Finsbury Central Division Case* (1892), 4 O'M. & H. 175, 176). Similarly, where, through a mistake of a polling clerk, a ballot paper with a wrong number has been received by an elector his vote is not invalidated (*Cirencester Division Case* (1893), 4 O'M. & H. 194). A vote may be struck off on the ground of personation on the mere evidence of the person whose vote it purported to be that he had not voted (*Finsbury Central Division Case, supra*).

(*o*) *Southampton Borough Case* (1869), 1 O'M. & H. 222, 224; *Bradford Borough Case* (1869), *ibid.*, 35, 40.

(*p*) *Westbury Borough Case* (1869), 1 O'M. & H. 47, 50; *Wallingford Borough Case* (1869), *ibid.*, 57, 59; *Bradford Borough Case, supra.*

(*q*) *Oldham Borough Case* 1869, 1 O'M. & H. 151, 161; *Bradford Borough Case, supra.* In the former case, on its being proved that a voter had voted contrary to his intention, in consequence of his employer's son having told him that if he voted as he had originally intended he must stand the consequences, which he understood to mean dismissal, the vote was, on a scrutiny, struck off. In reply to an application that it should be added to the poll of the candidate for whom the voter had originally intended to vote, BLACKBURN, J., said that he had no power to order the vote to be so added.

(*r*) Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 11; *Gloucester Borough Case* (1873), 2 O'M. & H. 59, 62.

(*s*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 25; *Malcolm* v. *Parry* (1874), L. R. 9 C. P. 610. It is not yet decided whether the section, in order to be applicable, connotes a corrupt state of mind in the voter whom the candidate has bribed. It has been so interpreted (*Malcolm* v. *Parry, supra*, by Lord COLERIDGE, C.J., and BRETT, J., but their interpretation of the section was doubted by GROVE, J., in the same case). It is worthy of note, as was pointed out by GROVE, J., that if the interpretation is correct, the section seems hardly necessary in view of this provision of Sched. I., Part I., r. 41. As against this interpretation it may also be observed that treating and undue influence are similarly mentioned in the section.

An interpretation like that given by Lord COLERIDGE, C.J., and BRETT, J., was given by FITZGERALD, B., in Ireland (*Down County Case* (1880), 3 O'M. & H. 115). The question seems, really, to resolve itself into one as to whether the section is meant to penalise a candidate who has been guilty of any of the practices specified in it, or merely to provide a rough and ready method of striking off, from his poll, votes obtained through such practices, which were already, in law, void. FITZGERALD, B., whose statement, however, was perhaps somewhat incidental to the point which he was deciding, clearly interprets it in the latter sense. Probably, then, the more reasonable interpretation of the section is that which has the more judicial authority, that it provides a readier way which does not involve a disclosure of ballot papers, of knocking off from the poll of that candidate against whom such practices are proved votes corresponding to the

Similarly, a vote will be struck off where any person who had been, for the purposes of such election, retained or employed, for reward, as agent, clerk, messenger, or in any other employment, by such candidate or on his behalf, is proved to have voted at such election (*a*).

voters who have been, on, at least, *primâ facie* evidence, influenced by these practices.

(*a*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 25. But if the work is of a kind that can be done simultaneously for both sides and does not imply personal service, *e.g.*, that of bill-posting contractor, the section, seemingly, does not necessarily apply (*Finsbury Central Division Case* (1892), 4 O'M. & H. 171, *per* CAVE, J., at p. 177). In that case the question arose on an objection to the votes themselves of people alleged to have been so employed, it being contended that their votes were invalid, so that it involved the construction of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 11, rather than that of s. 25 of the Ballot Act, 1872 (35 & 36 Vict. c. 33). VAUGHAN WILLIAMS, J., who agreed with the decision of CAVE, J., pointed out that the former section applied only to agents, canvassers, clerks, messengers, or people "in other like employment"; he considered that it applied only to employments *ejusdem generis* with those particularly specified, and he thought that the employment of a bill-poster was not of the same kind (*ibid.*). It will be observed that the Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 25, does not contain the word "like." But it has been held that the omission of the word "like" does not differentiate the section from s. 11 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), and that the employment must be of the class which is specified in the section (*Down County Case* (1880), 3 O'M. & H. 115, 118, 119). In that case there was a question of the employment of fly-drivers for the purpose of conveying canvassers on the day before the election and for taking voters to the poll on the day of the election. It was held that the applicability of the section was quite independent of any question as to whether such people were being employed in the way of their ordinary calling or in a way which was not part of their ordinary calling (*ibid.*, at pp. 119, 120, 121). If the section were applicable it would have this effect, that the court would strike a vote off each side, thus, knowingly, reducing the poll on one side or the other by a vote which had never been received and dealing with two votes in respect of one voter, both which things seem to be in disagreement with the spirit of the section. This result, apparently, must happen if any actual voter should have been employed as a messenger for the purposes of the election at different periods by each candidate and if s. 25 of the Ballot Act, 1872 (35 & 36 Vict. c. 33), is applicable. Yet to allow his vote to stand would seem to be contrary to s. 11 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102). Possibly the course would be adopted of dealing with his vote under the Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 41, ascertaining for which candidate it had been given and striking it off that candidate's poll. See *Southampton Borough Case* (1869), 1 O'M. & H. 222, 225, where a cabman, whose cab had been hired for the whole day on the polling day, was held by WILLES, J., not to come within the Representation of the People Act, 1867 (30 & 31 Vict. c. 102). See also judgment of MARTIN, B., in the *Cheltenham Case* (1869), Printed Judgments, p. 51; and the *Finsbury Central Division Case, supra*, where a voter, who lived at a board school with his wife, a schoolmistress, was paid for cleaning and preparing the schoolroom for a meeting for one of the candidates; the court held that s. 11 did not apply, and that his vote was good. But the section applies equally where the disqualifying employment is given to the voter's children, he receiving the wages (*Stepney Case* (1886), 4 O'M. & H 34, 38, 39, following *Southampton Borough Case, supra.* As to disqualification of electors employed for the purposes of an election, see further Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), Sched. I., Part I. (7), and the Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), s. 15, and p. 268, *ante.* It is noticeable that s. 25 of the Ballot Act, 1872 (35 & 36 Vict. c. 33), does not express any limitation of the period employment within which will incapacitate from voting; where the employment

SECT. I. In Parliamentary Elections.

Naturalisation of voter.

888. In order to prove the validity of a vote given by a foreigner who states that he has been naturalised the certificate of his naturalisation, or a certified copy thereof (*b*), must be produced, and his own mere statement, in evidence, that he has been naturalised is insufficient (*c*).

Votes given to disqualified candidate.

889. Votes given for a candidate who is disqualified, with knowledge of the disqualification or of the facts constituting it (*d*), or after due notice of such disqualification has been given (*e*), may be struck off on a scrutiny (*f*).

Votes improperly recorded.

890. Votes may also be struck off on a scrutiny when the ballot paper on which they are recorded has not on its back the official mark or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the number which each ballot paper must bear printed on the back thereof, is written or marked whereby the voter can be identified (*g*), or which is unmarked or is void for uncertainty (*h*).

Recount, when granted.

891. A recount is not granted as of right, but on evidence of good grounds for believing that there has been a mistake on the part of the returning officer the court will make an order for a recount (*i*). The application ought to be made at an early stage of

took place within a period when the employer was a candidate within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 63 (see pp. 263, 265, *ante*), the section was held to apply (*Stepney Case* (1886), 4 O'M. & H. 34, *per* DENMAN, J., at p. 38).

(*b*) Naturalization Act, 1870 (33 & 34 Vict. c. 14), s. 12 (2). See title ALIENS, Vol. I., p. 318.

(*c*) *Finsbury Central Division Case* (1892), 4 O'M. & H. 171, 172.

(*d*) *Beresford-Hope* v. *Sandhurst* (*Lady*) (1889), 23 Q. B. D. 79, 84, C. A.

(*e*) *Tipperary County Case* (1875), 3 O'M. & H. 19, 36, 37, 43, 46; *Trench* v. *Nolan* (1872), 6 I. R. C. L. 464.

(*f*) *Hobbs* v. *Morey*, [1904] 1 K. B. 74, 78. It is doubtful if counsel may be heard on behalf of voters whose votes are struck off (*Malcolm* v. *Parry* (1874), L. R. 9 C. P. 610, 614), but he was in that case heard as a matter of grace, the petitioner's counsel not objecting.

(*g*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 2; *Wigtown District Burgh Case*, (1874), 2 O'M. & H. 215; *Stepney Case* (1886), 4 O'M. & H. 34, 37, 38. But where ballot papers bear marks on the backs other than those of the printed numbers, if there is nothing to indicate that the voters might be identified thereby, the votes will stand (*Wigtown District Burgh Case, supra*, at p. 222; *Buckrose Division Case* (1886), 4 O'M. & H. 110, 111). But a cross upon the back opposite a candidate's name is not a compliance with the Ballot Act, and the vote does not count (*ibid.*). A circle instead of a cross caused the vote to be struck off in the *Wigtown District Burgh Case, supra*, at p. 221, and in the *Stepney Case, supra*, at pp. 37, 38; but in the *Buckrose Division Case, supra*, at p. 112, the vote was held good, the *ratio decidendi* given by POLLOCK, B. being how much the mark differed from a cross, which might be an indication as to whether it was the result of design or of mere clumsiness. And see *Cirencester Division Case* (1893), 4 O'M. & H. 194, 196, 197, where the court held that any mark clearly indicating the voter's intention ought to be counted, and the opinion was expressed that some earlier cases had been too exacting.

(*h*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 36; *Wigtown District Burgh Case, supra*, at p. 221; *Berwick-upon-Tweed Borough Case* (1880), 3 O'M. & H. 178, 182; *Stepney Case, supra*, at p. 37; *Buckrose Division Case, supra*, at p. 111.

(*i*) *Stepney Case, supra*, at pp. 50, 51.

the trial (*k*). If there are more than two candidates for more than one seat and a petition is presented against one, claiming as against him a recount and seat, it is not necessary for the petitioner to claim a general recount, *i.e.*, as regards the other candidate or candidates as well; on the recount against the respondent resulting in the petitioner's favour, he becomes entitled to the respondent's seat (*l*).

Questions of law.

892. If it appears to the election court, on the trial of an election petition, that any question of law as to the admissibility of evidence or otherwise requires further consideration by the High Court, the court has power to postpone the granting of a certificate till after the determination of such question by the Divisional Court (*m*), and, for this purpose, to reserve any such question in like manner as questions are usually reserved by a judge on a trial at Nisi Prius (*n*).

Procedure.

The procedure followed by the judges in reserving a question of law is to state a special case to the Divisional Court (*n*).

The election court will not reserve a point about which the court entertains no doubt, though application be made to reserve it (*o*).

A point of law may not be reserved unless it be one which would affect the whole result of the trial of the petition (*p*).

(*k*) *Stepney Case* (1886), 4 O'M. & H. 34, 50, 51.

(*l*) *Monkswell* (*Lord*) v. *Thompson*, [1898] 1 Q. B. 479 (a municipal case). *Quære*, whether in such a case it is open to the respondent, except by petition against the other successful candidate or candidates, to claim a recount against him or them. See judgments of HAWKINS and CHANNELL, JJ., *ibid.*, at pp. 484, 485, 486. It is submitted that it is not open to the respondent to do so, on the ground that it would be a questioning of the election or return of such candidate or candidates and so could only be effected by a petition.

(*m*) Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 14; R. S. C., Ord. 59, r. 1 (b).

(*n*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 12; *Bristol Borough Case* (1870), 2 O'M. & H. 27, 29; *Drogheda Borough Case* (1874), *ibid.*, 201, 203; *Tipperary County Case* (1875), 3 O'M. & H. 19, 41; *Stepney Case* (1886), 4 O'M. & H. 34, 36. But where judges decide a point, the fact of its being a difficult one does not make it a necessary practice that they should, on the application of one of the parties, reserve it for the Divisional Court (*Re Thornbury Division of Gloucestershire Election Petition, Ackers* v. *Howard* (1886), 16 Q. B. D. 739, *per* Lord COLERIDGE, C.J., at p. 740). In an Irish case, where the judges had given their decision on a point before the application to reserve it was made, they refused the application on that ground, and also on the ground that one of them was a member of the Court of Common Pleas, which would have had to determine the point, if reserved (*Londonderry City Case* (1886), 4 O'M. & H. 96, *per* O'BRIEN, J., at p. 103). In the *Drogheda Borough Case*, *supra*, where a point had been stated to the Irish Court of Common Pleas, which was equally divided upon it, BARRY, J., who had tried the petition, declined to say that he was satisfied that the election was void, and gave judgment for the respondent, following what was said by MARTIN, B., in his judgment in *Warrington Borough Case* (1869), 1 O'M. & H. 42, 44 (see note (*r*) on p. 460, *post*). In the *Bristol Borough Case*, *supra*, BRAMWELL, B., in reserving a point of law, gave leave to counsel to make to him at chambers any suggestions which they might think fit upon the case before it should be finally settled for stating.

(*o*) *Horsham Borough Case* (1876), 3 O'M. & H. 52, 56; *Down County Case* (1880), 3 O'M. & H. 115, 120; *Buckrose Division Case* (1886), 4 O'M. & H. 110, 114.

(*p*) *Taunton Borough Case* (1874), 2 O'M. & H. 66, *per* GROVE, J., at p. 71; *Re Stepney Election Petition, Isaacson* v. *Durant* (1886), 17 Q. B. D. 54, *per* Lord COLERIDGE, C.J., p. 55.

SECT. 1. In Parliamentary Elections.

Appeal.

Where a point of law is reserved an appeal lies from the decision upon it, with special leave of the Divisional Court, to the Court of Appeal, whose decision is final and conclusive (*q*).

893. Before upsetting an election the court ought to be satisfied beyond all doubt that the election is void (*r*).

SUB-SECT. 6.—*Judgment and its Effect.*

Result to be certified by the judges.

894. At the conclusion of the trial the judges who try the petition determine whether the member whose return or election is complained of, or any and what other person, was duly returned or elected, or whether the election was void (*s*). They forthwith certify their determination to the Speaker in writing by a certificate under the hands of both judges. If they differ as to whether the member whose return or election is complained of was duly returned or elected, they certify that difference, and the member is deemed to be duly elected or returned. If they determine that the member was not duly elected or returned, but differ as to the rest of the determination, they certify that difference and the election is deemed void. The determination is, upon such certificate being given, final to all intents and purposes (*t*).

(*q*) *Taunton Borough Case* (1874), 2 O'M. & H. 66, *per* GROVE, J., at p. 71; *Re Stepney Election Petition, Isaacson* v. *Durant* (1886), 17 Q. B. D. 54, *per* Lord COLERIDGE, C.J., at p. 55; Judicature Act, 1881 (44 & 45 Vict. c. 68,) s. 14. It is submitted that s. 1 (5) of the Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), does not apply to such decisions on appeal from the Divisional Court, and that, in order that the appeal may lie, the leave must be given by the Divisional Court, and that, unless such leave have been given, the Court of Appeal, has no jurisdiction to entertain such appeal (*McHarg* v. *Universal Stock Exchange* [1895], 2 Q. B. 81, 83; *Wynne-Finch* v. *Chaytor* (1903), 19 T. L. R. 631, 632; and see *Unwin* v. *McMullen*, [1891] 1 Q. B. 694, 699, C. A.; *Shaw* v. *Reckitt*, [1893] 2 Q. B. 59, C. A.). Where, on the argument before the Divisional Court of a question of law reserved by a commissioner on the trial of a municipal election petition, the respondent claimed the right to begin and the petitioner opposed the claim, the court were of opinion that the respondent should begin (*Re Gloucester Municipal Election Petition*, 1900, *Ford* v. *Newth*, [1901] 1 K. B. 683, 686). In *Re Stepney Election Petition, Isaacson* v. *Durant, supra*, on the argument of a question of law reserved by judges trying a parliamentary election petition, the point as to the right to begin appears not to have been in dispute, but the respondent appears in fact to have begun. But in *Re Thornbury Division of Gloucestershire Election Petition, Ackers* v. *Howard* (1886), 16 Q. B. D. 739, where also this point seems not to have been in dispute, the petitioner appears in fact to have begun.

(*r*) *Warrington Borough Case* (1869), 1 O'M. & H. 42, *per* MARTIN, B., p. 44, following a statement of WILLES, J., in the *Lichfield Borough Case* (1869), 1 O'M. & H. 22, not reported on this point.

(*s*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (13).

(*t*) *Ibid.*; Parliamentary Elections and Corrupt Practices Act, 1879 (42 & 43 Vict. c. 75), s. 2; *Waygood* v. *James* (1869), L. R. 4 C. P. 361. Thus, a petition may not be presented against the election of a petitioner who has been declared on a petition complaining of such election to have been duly elected, even though no recriminatory case had been raised, or, having been raised, had not been gone into, by the respondent at the hearing. But if collusion between the respondent and such successful petitioner were shown, it might be competent for the House of Commons to order a second investigation, though it might not be within the competency of the court to do so (*per* WILLES, J., at p. 369; *per* BRETT, J., at p. 373); but BRETT, J., thought that the judgment, being a judgment *in rem*, might not be final, if obtained by fraud and deception of the court.

Grounds for judgments.

895. On the hearing of parliamentary election petitions it is the practice for the judges, in giving judgment, to give the reasons on which the judgment is founded (*a*).

If the judges differ on a matter which constitutes a subject of report (*b*) to the Speaker, they certify that difference, and they make no report upon such matter (*c*).

Special report.

896. At the time of making their report to the Speaker the judges may also make a special report to him as to any matters arising in the course of the trial, an account of which, in their judgment, ought to be submitted to the House of Commons (*d*). The House of Commons may make any order, in respect of such special report, which they may think proper (*e*).

Matters to be reported.

897. Where a charge is made in an election petition of any corrupt or illegal practice having been committed at the election in question, the judges must, in addition to their certificate and at the time of the making thereof, report in writing to the Speaker:—

(1) Whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt or illegal practice (*f*);

(2) The names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice (*g*);

(3) Whether corrupt or illegal practices have extensively prevailed at such election, or whether there is reason to believe that corrupt or illegal practices have so prevailed (*h*);

(*a*) *Ipswich Borough Case* (1886), 4 O'M. & H. 20, 21, *per* DENMAN, J.; *Norwich Borough Case* (1886), *ibid.*, 84, 90. If the judges differ in their judgment upon the issue it is the practice for the junior judge to give his judgment first (*Great Yarmouth Borough Case* (1906), 5 O'M. & H. 176, 178).

(*b*) See p. 460, *ante*.

(*c*) Parliamentary Elections and Corrupt Practices Act, 1879 (42 & 43 Vict. c. 75), s. 2; *Montgomery Boroughs Case* (1892), 4 O'M. & H. 167, 170.

(*d*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (15).

(*e*) *Ibid.*, s. 14.

(*f*) *Ibid.*, s. 11 (14) (a); Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 11.

(*g*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (14) (b); Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 11.

(*h*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (14) (c); Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 11. In making their report the judges are confined to the evidence which has been given before them; see p. 444, *ante*. Where the election court came to the conclusion that corrupt practices had extensively prevailed, the judges stated that, in view of the probability of an election commission following their certificate, they would not report the names of the persons proved to have been guilty of corrupt practices, unless the House should require them to be reported (*Heywood* v. *Dodson* (1880), 44 L. T. 285, 287). But the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11 (14), seems to be peremptory as regards the election court reporting such names. It is submitted that, in view of that sub-section and of the fact that it is in the same Act that provision is made (s. 15) for the appointing of an election commission in consequence of the report of the election court, the obligation upon the court to report the names of the persons proved to have been guilty of corrupt practices is not removed by the probability of an election commission being appointed to inquire.

SECT. 1. **In Parliamentary Elections.**

(4) Whether any candidate at such election has been guilty by his agents of any corrupt or illegal practice in reference thereto (*i*); and if any persons are reported to have been guilty of any corrupt or illegal practice the judges are, further, to report

When report is to be laid before the Attorney-General.

(5) Whether those persons have or have not been furnished with certificates of indemnity (*k*); and such report must be laid before the Attorney-General with a view to his instituting or directing a prosecution against such persons as have not received certificates of indemnity, if the evidence should, in the opinion of the Attorney-General, be sufficient to support a prosecution (*l*).

Person about to be reported to have opportunity of being heard.

898. Before any person who is neither a party to an election petition nor a candidate on whose behalf the seat is claimed thereby is reported by the election court to have been guilty of any corrupt or illegal practice, the court must cause notice to be given to such person, and, if he appears in pursuance thereof, the court is to give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported (*m*).

Report not final.

899. The report of the judges is not, like their certificate, final and conclusive as to the matters contained in it (*n*).

Conclusion of petition.

When the judges have given their judgment and have signed and delivered from their hands the certificate which they make to the Speaker the petition is concluded, and is, therefore, no longer affected by any event which may happen during the time which

(*i*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 5, 11.

(*k*) *Ibid.*, s. 60.

(*l*) *Ibid.*

(*m*) *Ibid.*, s. 38 (1). If the person on whom such notice is served is desirous to appear and show cause against being reported, he can only be heard in person; counsel or solicitor may not be heard on his behalf (*R.* v. *Mansel Jones* (1889), 23 Q. B. D. 29). This case must be taken to overrule the decision of DENMAN and CAVE, JJ., in the *Ipswich Election Petition* (1886), cited in the argument on the trial of *R.* v. *Mansel Jones*, *supra*. BLACKBURN, J., in the *Bewdley Borough Case* (1869), 1 O'M. & H. 174, 176, was of opinion that a person who had received notice in consequence of charges of bribery being proved against him was entitled to be heard by counsel. But this opinion was given upon s. 45 (now repealed) of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), which did not contain the words "by himself." Notwithstanding the decision in *R.* v. *Mansel Jones*, *supra*, election courts have exercised a discretion of allowing persons so showing cause to appear by counsel; see *Hexham Case* (1892), Day, 78; *Rochester Case* (1892), *ibid.*; *Worcester Borough Case* (1906), 5 O'M. & H. 214, 215, where the court heard counsel on behalf of a person charged with corrupt practices, and also a solicitor on behalf of other persons. It is submitted, however, that it was decided by all three judges in *R.* v. *Mansel Jones*, *supra*, at pp. 34, 35, that the election court had no discretion to hear counsel on behalf of such persons.

(*n*) *Stevens* v. *Tillett* (1870), L. R. 6 C. P. 147. In this case, where the judge, on the trial of a previous election petition, had reported that, in his opinion, the election had been perfectly purely conducted on the part of the then petitioner, it was held that, notwithstanding such report, on a petition against him in respect of a subsequent election, charges of corruption connected with the former election, which had since become known, might be gone into (*Gravesend Borough Case* (1880), 3 O'M. & H. 81, *per* LOPES, J., at p. 82).

intervenes between the moment when they have finally parted with their certificate from their hands and the moment when it reaches the hands of the Speaker, though such event be one which, if it had happened earlier, would have caused the petition to abate or drop (*o*).

Action by House of Commons.

900. The House of Commons, on being informed by the Speaker of the judges' certificate and their report or reports (if any), orders the same to be entered in the journals and gives the necessary directions for confirming or altering the return or for issuing a writ for a new election, or for carrying the determination into execution as circumstances may require (*p*). Where the judges make a special report the House of Commons may make such order in respect of such special report as it thinks proper (*q*).

Liability of returning officer wilfully neglecting to make return.

901. Where on the hearing of an election petition it is determined that any person was entitled to have been returned, if the returning officer shall have wilfully refused, neglected or delayed duly to return such person, the person so aggrieved may sue the returning officer in the High Court of Justice, and recover double the damages which he has sustained, together with full costs of the suit. But the suit must be instituted within one year (*r*) after the commission of the act on which it is founded, or within six months of the conclusion of the trial of the election petition (*s*).

SUB-SECT. 7.—*Election Commissioners.*

Appointment

902. Where both Houses of Parliament by a joint address represent to the King that an election court has reported to the Speaker that corrupt practices have, or that there is reason to believe that corrupt practices have (*t*), extensively prevailed at an election in any county or city, borough, university, or place, and pray for an inquiry to be made by persons named in such address, His Majesty may by warrant under his royal sign manual appoint those persons to be commissioners to make inquiry into the existence of such corrupt practices (*u*), and of illegal practices (*a*).

Election commissioners may similarly be appointed for such

(*o*) *Marshall* v. *James* (1874), L. R. 9 C. P. 702.

(*p*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 13.

(*q*) *Ibid.*, s. 14.

(*r*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 48. But see now the Public Authorities Protection Act, 1893 (56 & 57 Vict. 61), ss. 1, 2, and title PUBLIC AUTHORITIES AND PUBLIC OFFICERS.

(*s*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 48. As to the additional penalty to which the returning officer may become liable, see the Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 11, and *Britain* v. *Whitehorn* (1900), *Times*, 30th March.

(*t*) See p. 461, *ante*.

(*u*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 1; Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 15.

(*a*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 12.

SECT. 1. In Parliamentary Elections.

an inquiry when a petition to the House of Commons is presented within twenty-one days after the return to the Clerk of the Crown of a member to serve in Parliament for any borough or county, or within fourteen days after the meeting of Parliament, signed by two or more electors of such borough or county, alleging that corrupt practices have extensively prevailed at the then last election for such borough or county, or that there is reason to believe that they have (*b*). In such cases the commissioners are to make the inquiry in the same manner, and their powers and duties are the same as when the inquiry is instituted in consequence of a report by an election court (*c*).

Who may be commissioner.

903. The persons eligible to be appointed election commissioners must be barristers of not less than seven years' standing, not being members of Parliament nor holding any office or place of profit under the Crown other than that of recorder of any city or borough (*d*). If any of the commissioners so appointed should die, resign, or become incapable of acting, the surviving or continuing commissioners or commissioner may act in such inquiry as if they or he had been solely appointed to be commissioners or a sole commissioner for the purposes of such inquiry, and, in the case of a sole surviving or continuing commissioner, as if the appointment of a sole commissioner had been authorised by the Act. All the provisions of the Act concerning the commissioners appointed to make such inquiry apply to the survivor or survivors (*e*).

Oath.

Every commissioner before beginning to act must take an oath before a judge of the King's Bench Division of the High Court of Justice (*f*), that he will truly and faithfully execute the powers and trusts vested in him according to the best of his knowledge and judgment (*g*).

Secretary, clerks, etc.

Any commissioners so appointed may, at their pleasure, appoint, or dismiss, a secretary, and so many clerks, messengers, and officers as shall be thought necessary by one of His Majesty's principal Secretaries of State, for the purpose of conducting the inquiry to be made by them, and they may pay to such secretary, clerks, messengers, and officers such salaries and allowances as the Treasury may think reasonable (*h*).

Powers and duties.

904. The commissioners so appointed are, upon their appointment, or within a reasonable time thereafter, to go to the

(*b*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 56; Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 12.

(*c*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 56.

(*d*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 1.

(*e*) *Ibid.* As to the question of the necessity of the unanimity of the commissioners for the validity of their acts, see *Fitzgerald's Case* (1869), L. R. 5 Q. B. 1, where it was touched upon, but not decided (*per* COCKBURN, C.J., MELLOR and HANNEN, JJ., at pp. 5, 6, 11, 14).

(*f*) *Ibid.*; Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16; Order in Council, 16th December, 1880, Statutory Rules and Orders Revised, Vol. XII., p. 1.

(*g*) *Ibid.*, s. 2; a form of oath is contained in that section.

(*h*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 3.

constituency in relation to which they have to hold such inquiry. They are, from time to time, to hold meetings for the purposes of such inquiry at some convenient place therein or within ten miles thereof. They have power to adjourn such meetings from time to time from any one place to any other place therein or within ten miles thereof, as may seem to them expedient. They may not adjourn the inquiry for any period exceeding one week without the consent and approbation of one of His Majesty's principal Secretaries of State (*i*). With such approbation and consent it is lawful for them to hold meetings in the cities of London or Westminster, and to adjourn the same from time to time as they think fit (*j*).

Notice of appointment, and time of first meeting.

They are to give notice of their appointment and of the time and place of the holding of their first meeting by publication thereof in some newspaper in general circulation in the constituency (*k*).

Scope of inquiry to be made by commissioners.

905. The commissioners are, by all such lawful means as seem to them best, with a view to the discovery of the truth, to inquire into the manner in which the election was conducted, and whether any corrupt or illegal practices were committed at such election. If such corrupt practices were committed, the commissioners must inquire whether such practices were by way of the gift or loan, or the promise of the gift or loan, of any sum of money or any other valuable consideration to any voter or voters, or to any other person or persons on behalf of such voter or voters, for the promise or the giving of his or their vote or votes, or for the refraining or promising to refrain from giving his or their vote or votes at such election, or for the procuring or undertaking to procure the votes of other electors at such election. They must, further, in such case inquire whether such corrupt practices were committed by the payment of any sum of money or loan or other valuable consideration whatsoever to any voter, or to any other person on his behalf, before, during, or after the termination of such election, by way of head-money, or in compliance with any usage or custom in the constituency to which the inquiry relates, or how otherwise. They must, further, in such case inquire whether any sum of money or other valuable consideration whatsoever has been paid to any voter, or to any other person on his behalf, after the termination of such election as a reward for giving or having refrained from giving his vote at such election (*l*).

If the commissioners find that corrupt or illegal practices have been committed at the election into which they are authorised to inquire, it is lawful for them to make the like inquiries concerning the latest previous election for the same constituency, provided that

(*i*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 4. The word "adjourn," in this section, does not mean that a formal adjournment of the commission is necessary, seeing that the commissioners have power, from time to time, to hold meetings; but the intervals between the meetings may not, except with the leave specified, exceed one week; no formal adjournment is necessary (*Fitzgerald's Case* (1869), L. R. 5 Q. B. 1). The word "adjourn" is here used not in its technical legal sense, but in its popular sense, namely, to postpone (*per* MELLOR, LUSH, and HANNEN, JJ., *ibid.*, at pp. 10, 12, 13).

(*j*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 5.

(*k*) *Ibid.*, s. 4.

(*l*) *Ibid.*, s. 6.

SECT. 1. In Parliamentary Elections.

such election did not take place before the 25th August, 1883 (*m*). If they find that corrupt or illegal practices were committed at such previous election, it is lawful for them to make the like inquiries concerning the election immediately preceding such previous election, and so on, from election to election, as far back as they think fit (*n*), provided that no such election was held prior to the 25th August, 1883 (*o*). But if they do not find that corrupt or illegal practices have been committed at any election, they are not to inquire into any previous election (*p*).

Powers of summoning witnesses.

906. The commissioners have power by summons under the hand and seal of any one of them to require the attendance at a place and time mentioned in the summons, the time to be a reasonable one from the date of the summons, of any persons whomsoever whose evidence they may consider to be material to the subject-matter of the inquiry, and to require all persons to bring before them such books, papers, deeds, and writings as may appear to the commissioners necessary for the purposes of the inquiry (*q*).

Obligation on witnesses to give evidence.

All persons so summoned are bound to attend and to produce all such books, papers, deeds, and writings as are in their custody or under their control (*r*). They are bound to answer all questions put to them by the commissioners touching the matters into which the commissioners have to make inquiry (*s*), provided that no witness is liable to be asked, nor is he bound to answer, any question for the purpose of proving the commission of a corrupt practice at or in relation to any election held prior to the 25th August, 1883 (*t*).

Certificate of indemnity to witnesses.

A witness is not excused from answering any question regarding an election with relation to which he is called to give evidence, on

(*m*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 49. This is the date on which the Act was passed, and by s. 49 thereof election commissioners are prohibited from making inquiries concerning any election which took place prior thereto.

(*n*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 6.

(*o*) See note (*m*), *supra*.

(*p*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 6. It will be observed that though by s. 12 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), the scope of inquiry by the election commissioners is extended to illegal practices, the provisions of s. 15 of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), empowering the appointment of election commissioners upon the report of an election court that corrupt practices have extensively prevailed, appear not to be so extended by s. 12 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), as to empower the appointment of such commissioners upon the report of an election court merely that illegal practices have extensively prevailed.

Though, accordingly, it would seem to be inconsistent that election commissioners, upon a finding of the commission of only illegal practices at a previous election, should thereby be authorised to inquire into the next previous election, yet, seeing that the powers and duties of election commissioners under the Election Commissioners Act, 1852 (15 & 16 Vict. 57), are, in virtue of s. 12 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), to be construed as if the words "corrupt practices" included "illegal practices," they appear to be authorised to do so.

(*q*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 8.

(*r*) *Ibid.*

(*s*) *Ibid.*

(*t*) See note (*m*), *supra*.

SECT. 1. In Parliamentary Elections.

the ground that the answer to such question may criminate or may tend to criminate him, or on the ground of privilege. But no statement made by any person in answer to any question put by the commissioners is, except in cases of indictment for perjury committed in such answers, to be admissible in evidence in any proceeding, civil or criminal (*u*). The protection, however, does not extend to any previously existing document, to which the witness, in his evidence before the commissioners, may have referred, which may be proved independently of such evidence, even though the first indication of it may have been afforded by such evidence (*x*). It is against the use of his answers before the commissioners in evidence against him in any subsequent proceedings that the witness is protected—and, seemingly, this protection holds good even though the subsequent proceedings be based on charges of a totally different nature (*y*)—and not against such proceedings themselves, though they be instituted in respect of some fact which the witness may have disclosed in such answers, if it be proved independently of them, even though the answers may have afforded the first indication of the fact or the clue to the institution of the proceedings (*z*). All the provisions of s. 59 of the Corrupt and Illegal Practices Prevention Act, 1883, relating to witnesses called before an election court (*a*) are also applicable to witnesses called before election commissioners (*b*). Thus, a witness who answers truly all questions which the election commissioners require him to answer is entitled to a certificate of indemnity (*c*).

The granting of a certificate is a matter within the discretion of the election commissioners in the exercise of their judgment as to whether a witness has or has not answered so as to be entitled to it, and a mandamus will not lie against them for refusing to grant one (*d*).

Privileges of solicitors and agents.

907. There is a limited privilege for solicitors or persons lawfully acting as agents for parties to election petitions. Where a solicitor

(*u*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 8. It will be observed that the section does not expressly limit the inadmissibility to proceedings against the witness; but see *R.* v. *Leatham* (1861), 30 L. J. (Q. B.) 205, *per* CROMPTON, J., at p. 207, and *per* BLACKBURN, J., at p. 211. It is so limited by the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 59 (1) (b), which also applies to the evidence of witnesses before election commissioners.

(*x*) *R.* v. *Leatham*, *supra*.

(*y*) *Ibid.*, *per* CROMPTON, J., at pp. 207, 208.

(*z*) *Ibid.*, and *per* BLACKBURN, J., pp. 210, 211.

(*a*) See p. 450, *ante*.

(*b*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 59 (4).

(*c*) See p. 450, *ante*.

(*d*) *R.* v. *Holl* (1881), 7 Q. B. D. 575, C. A. overruling, on this point, *R.* v. *Price* (1871), L. R. 6 Q. B. 411. But if the commissioners declined to exercise jurisdiction and made no exercise of their discretion, a mandamus would probably lie (*R.* v. *Holl*, *supra*, *per* BRETT, L.J., at p. 585, also *per* COTTON, L.J., *R.* v. *Holl*, *supra*, at p. 588, following, so far, *R.* v. *Price*, *supra*). Both these cases were decided on the Corrupt Practices Prevention Act, 1863 (26 & 27 Vict. c. 29), s. 7, the effect of which was, as regards this point, the same as that of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 59 (1) (a).

SECT. 1. In Parliamentary Elections.

or such other person has not taken any part or been concerned in the election to which the petition relates, the election commissioners inquiring into such election are not entitled to examine such solicitor or agent respecting matters which have come to his knowledge by reason only of his being concerned as solicitor or agent for a party to such petition (*e*).

Witnesses failing to appear on summons.

908. If any person on whom a summons has been served to appear before election commissioners, such summons having been served by the delivery thereof to him or by the leaving thereof at his usual place of abode, fails to appear before them at the time and place specified in the summons, the commissioners may certify such default under their hands and seals or under the hand and seal of any one of them to the High Court, and the Court may thereupon proceed against such person in the same manner as if he had failed to obey any writ of *subpœna* or any process issuing out of the High Court (*f*).

Swearing.

909. An oath or an affirmation, as the case may be, may be administered to the witnesses by the commissioners or any one of them (*g*). Witnesses who give false evidence before the commissioners are guilty of perjury (*h*).

Witness refusing to be sworn etc.

910. If any person appearing on such summons before the commissioners refuses to be sworn or affirm respectively, or to answer the questions which are put to him by the commissioners touching the matters under inquiry, or to produce and show to the commissioners any papers, books, deeds, or writings which are in his possession or under his control, the production of which the commissioners consider to be necessary, or if any person is guilty of any contempt of the commissioners or their office, the commissioners have the same powers, exercisable in the same way, as any judge of the High Court (*i*).

Duties of commissioners as to reporting.

911. The commissioners are, from time to time, to report to the Crown the evidence taken by them and what they find concerning the subject-matters of their inquiry.

They are, especially, to report, with respect to each election, the names of all persons whom they find to have been guilty of corrupt or illegal practices thereat, of those who have given bribes for the purchase or for the purpose of purchasing the votes of others, and of those who have themselves received money or any other valuable consideration for having given, or having refrained from giving, or for the purpose of inducing them to give or to refrain from giving, their votes at such election. They are, further, so especially to report the names of all persons whom they find to have given

(*e*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 59 (5).

(*f*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 12.

(*g*) *Ibid.*, s. 11; Oaths Act 1888 (51 & 52 Vict. c. 46), s. 1.

(*h*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 13. See title CRIMINAL LAW, Vol. IX., p. 480.

(*i*) *Ibid.*, s. 12.

to others, or to have themselves received payments by way of head-money or as a reward for giving or refraining from giving their votes at such election (*k*). In reporting the names of such persons they are also to report whether such persons have or have not been furnished with certificates of indemnity (*l*), and such report, accompanied by the evidence on which it is based, is laid before the Attorney-General for the same purposes as the like report by an election court is laid before him (*m*). They are, further, especially, to report all other things whereby, in their opinion, the truth may be better known concerning the subject of their inquiry (*n*). Seemingly, the commissioners are not concluded as to their findings by the report of the election judges which occasioned the appointment of the commission, and if, upon more extensive inquiry being made by them and further evidence coming before them, they find that charges are established which the election judges, on the evidence brought before them, had found not to be established, the commissioners may report their findings on such charges (*o*).

Persons about to be reported to have opportunity of being heard.

912. Before any person is so reported by election commissioners he is to have the same right to notice and to an opportunity of being heard and of calling evidence as is given to the persons entitled thereto before being reported by an election court (*p*).

Right of appeal of persons reported.

Every person reported by election commissioners to have been guilty of any corrupt or illegal practice at an election may appeal against such report to the next court of oyer and terminer or gaol delivery held in and for the county or place in which the offence is alleged to have been committed, and the said court may hear and determine the appeal. Subject to any rules of court which may be made (*q*) the appeal may be brought, heard, and determined in the same manner as if the court were a court of quarter sessions and the election commissioners were a court of summary jurisdiction, and as if the person reported had been convicted by a court of summary jurisdiction for an offence under the Corrupt and Illegal Practices Prevention Act, 1883. The proceedings are similar to those in an appeal to quarter sessions, and the condition as to the giving of recognisances applies as in the case of such an appeal; the recognisances may be entered into before any court of summary jurisdiction (*r*). Likewise, also, the proceeding is by way of

(*k*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 6.

(*l*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 60.

(*m*) *Ibid.*; see p. 462, *ante*.

(*n*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 6.

(*o*) See *Caldicott* v. *Commissioners for Corrupt Practices* (1907), 21 Cox, C. C. 404, *per* BIGHAM, J., at p. 408. See also p. 460, *ante*, and *Stevens* v. *Tillett* (1870), L. R. 6 C. P. 147.

(*p*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 38 (1); see p. 462, *ante*.

(*q*) So far no rules have been made.

(*r*) *Caldicott* v. *Commissioners for Corrupt Practices*, *supra*. In that case, notwithstanding that the appellant had not entered into recognisances, the court heard the appeal on its merits.

SECT. 1. In Parliamentary Elections.

rehearing, and, in order that the finding of the commissioners contained in their report may be sustained, sufficient evidence to support the charges of which they have reported the appellant as guilty must be laid before the court hearing the appeal (*s*). Notice of any such appeal is to be given to the Director of Public Prosecutions in manner and time directed by rules of court (*t*), and, subject to such rules, within three days after the appeal is brought (*u*). It is not the duty of the Director of Public Prosecutions to see that a case is made out against the appellant, but it may be his duty to see that the case is fairly brought within the cognisance of the court (*v*).

Appeals may be heard by judges on the rota.

If it should appear to the Lord Chancellor that such appeals are interfering, or are likely to interfere, with the ordinary business of any courts of oyer and terminer or gaol delivery, he may direct the appeals, or any of them, to be heard by the judges for the time being on the rota for election petitions. In such event one of these judges is to proceed to the county or place where the offences are alleged to have been committed, and is there to hear and determine the appeals in the same manner as if he were a court of oyer and terminer (*w*).

Commissioners' report to be laid before Parliament.

913. Every report which the commissioners make to the Crown is to be laid before Parliament within one calendar month next after the report is made, if Parliament is then sitting, or, if Parliament is not then sitting, within one calendar month next after the next meeting of Parliament (*x*).

(*s*) *Caldicott* v. *Commissioners for Corrupt Practices* (1907), 21 Cox, C. C. 404.

(*t*) So far no rules have been made.

(*u*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 38 (2).

(*v*) *Caldicott* v. *Commissioners for Corrupt Practices, supra, per* BIGHAM, J., at p. 408. In that case the commissioners were not represented, but the Director of Public Prosecutions was represented. On the appeal coming on for hearing his representative was asked by the court to put in and read the report of the commissioners, and the evidence given by and against the appellant before them. He also called the witnesses who had given the evidence, and the appellant cross-examined them. Leave was given to the appellant to call any evidence in chief that he desired.

(*w*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 38 (3).

(*x*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 7. On account of reports of election commissioners appointed in 1869 in consequence of the reports by the election court which had tried the petitions in respect of the boroughs of Bridgewater and Beverley in that year, the commissioners having in each case inquired into elections previous to those to which the petitions related, these boroughs were, in 1870, by Act of Parliament (stat. (1870) 33 & 34 Vict. c. 21) disfranchised. Similarly, in the same year, the boroughs of Sligo and Cashel were by Act of Parliament (stat. (1870) 33 & 34 Vict. c. 38) disfranchised. In consequence of the report of election commissioners that corrupt practices had extensively prevailed at an election for the city of Norwich held in 1875 it was enacted by the Norwich and Boston Corrupt Voters Act, 1876 (39 & 40 Vict. c. 72), that the writ for Norwich should be suspended, and that there should be no election of a member or members for that city till after the end of the then Parliament. In consequence of reports by election commissioners, in most cases dealing specifically with elections previous to that as to which the judge had, on the trial of the election petition, reported, the writ was suspended for Boston, Canterbury, Chester, Gloucester, Macclesfield, Oxford, and Sandwich, till seven days after the meeting of Parliament in the following year (Corrupt

SECT. 1. In Parliamentary Elections.

914. Every person who is reported by election commissioners to have been guilty of any corrupt or illegal practice at an election, whether he has or has not obtained a certificate of indemnity, becomes subject to the same incapacity (*a*) to which he would be subject if he had at the date of such election been convicted of the offence of which he is reported to have been guilty (*b*).

Penalties on being reported.

A report of any election commissioners inquiring into an election for a county or borough does not avoid the election of any candidate who has been declared by an election court, on the trial of a petition respecting such election, to have been duly elected at such election, nor does it render him incapable of sitting in the House of Commons for the said county or borough during the parliament for which he was elected (*c*).

Report may not avoid an election declared valid by court.

If a justice of the peace, a barrister, a solicitor, or a person belonging to any profession the admission to which is regulated by law, is reported by election commissioners to have been guilty of any corrupt practice, or if a licensed person is reported by them to have knowingly suffered any bribery or treating, in relation to an election, to take place upon his licensed premises, it is the duty of the Director of Public Prosecutions to take such action upon such matters respectively as if the same had been reported by an election court (*d*). For this purpose the commissioners are to report the case to the Director of Public Prosecutions, together with such information as is necessary or proper to enable him to take such action (*e*).

Special penalties on certain classes of person.

915. The provisions as to the removal of an incapacity resulting from a report by election commissioners, based upon evidence which subsequently proves to have been perjured, are the same as in the like case with relation to a report made by a court trying a parliamentary election petition (*f*).

Report based on perjured evidence.

916. The commissioners have power to award to witnesses who have been summoned to appear before them a reasonable sum for their travelling expenses, and, also, a reasonable sum for their maintenance according to a scale determined and approved by the Treasury. The commissioners are to certify to the Treasury the names of these witnesses, together with the sums allowed to each of them, and the commissioners are to pay such sums to the witnesses out of the moneys provided by Parliament for the purposes of the commission (*g*).

Expenses of witnesses.

Practices (Suspension of Elections) Act, 1881 (44 & 45 Vict. c. 42)), which period was extended by the Corrupt Practices (Suspension of Elections) Act, 1882 (45 & 46 Vict. c. 68), to seven days after the meeting of Parliament in the then following year.

(*a*) As to what such incapacity is, see p. 483, *post*.

(*b*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 38 (5).

(*c*) *Ibid.*

(*d*) *Ibid.*, s. 38 (6), (7), (8) (b). See p. 485, *post*.

(*e*) *Ibid.*, s. 38 (9).

(*f*) *Ibid.*, s. 46. See p. 489, *post*.

(*g*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 14.

SECT. 1. In Parliamentary Elections.

Protection and privileges of commissioners.

917. The commissioners have the same protection and privileges in case of any action being brought against them for any act or omission in the execution of their duty as is accorded to justices acting in execution of their office (*h*).

SUB-SECT. 8.—*Costs.*

How awarded.

918. All the costs of a petition or incidental to it, or of any proceedings in connection with it, excepting those specifically provided for by the Parliamentary Elections Act, 1868, as amended by the Corrupt and Illegal Practices Prevention Act, 1883, are to be borne by the parties, in such manner and proportion as the court or the judges may determine. In making an order as to costs regard is to be had to the disallowance of any costs which, in the opinion of the court or judges, may have been caused by vexatious conduct, unfounded allegations, or unfounded objections, as, also, to the discouragement of any unnecessary expense, by causing the same to be borne by the party responsible for it whether such party be, on the whole, successful or not (*i*).

General rule.

919. The general rule is that costs follow the event (*k*), but the court has a discretion, and the rule may be displaced by special circumstances (*l*) in which the court may make a special order (*m*).

Grounds for special orders.

There are many grounds of departure from the general rule, such as failure of the party upon the case mainly and primarily relied on, though he gains his object (*n*); or failure of a party upon an important charge against the other party, though he gains his object (*o*); or divided success on main issues (*p*); or abandonment of a main issue by either side (*q*); or failure by a party upon some of the charges alleged by him (*r*); or his success upon some charge or charges though he fails on the main issue (*s*); or disagreement

(*h*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 16.

(*i*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 41.

(*k*) *Louth County Case* (1880), 3 O'M. & H. 161, 177; *Oxford Borough Case* (1880), *ibid.*, 157.

(*l*) *Carrickfergus Borough Case* (1869), 1 O'M. & H. 264, 268, 269, *per* O'BRIEN, J.

(*m*) *Stroud Borough Case* (1874), 3 O'M. & H. 7, *per* PIGOTT, B., p. 12.

(*n*) *Plymouth Borough Case* (1880), 3 O'M. & H. 107, 112, where the court made no order; *Southampton Borough Case* (1895), 5 O'M. & H. 17, 24, 25, where, the election being avoided on the ground of an illegal payment, the petition failing on all other charges, the petitioners were allowed only such costs as would have been incurred if the petition had been presented alone on the issue of that illegal payment, and the respondent was awarded the rest of the costs, with one exception, as to which see note (*l*) on p. 474, *post.*

(*o*) *Sandwich Borough Case* (1880), 3 O'M. & H. 158, 160, where, moreover, offences by the successful party having been proved, the court made no order.

(*p*) *Stafford Borough Case* (1869), 1 O'M. & H. 228, *per* BLACKBURN, J., at p. 234. In that case there were two petitions, but the court, as it stated, treated them as one.

(*q*) *Horsham Borough Case* (1876), 3 O'M. & H. 52, 56, where, the prayer for the seat and the recriminatory case respectively being abandoned, no order was made as to costs on these issues; *Gravesend Borough Case* (1880), 3 O'M. & H. 81, 82, 83, 84.

(*r*) *Stroud Borough Case, supra,* where the successful party was allowed no costs on such charges; *Lichfield Borough Case* (1880), 3 O'M. & H. 136, 139, 140.

(*s*) *Bolton Case* (1874), 2 O'M. & H. 138, 151; *Thornbury Division Case* (1886),

of the judges upon a main issue (*t*); or disagreement upon some of the charges alleged (*a*); or the fact that, though the petition fails, the court is of opinion that an inquiry was called for (*b*), or that it has been occasioned by the conduct of the opposite party (*c*); or, if there be a scrutiny, the fact that the party who has asked it, though he has not succeeded in establishing a majority of lawful votes, has reduced the number of the votes of the opposite party to an equality (*d*); or that, considering the small majority of votes polled proportionately to the number of voters, the prayer for a scrutiny was reasonable (*e*); or the fact that a party has made charges recklessly (*f*); or that his particulars are oppressive (*g*), or unnecessarily voluminous (*h*); or that he has not attempted (*i*), or has failed (*k*), to substantiate them; or that the conduct of a

4 O'M. & H. 65, 69, where a successful respondent was awarded no costs as to a charge of rioting and intimidation alleged in the petition, of which though there was not enough evidence to avoid the election, there was, in the opinion of the court, enough evidence to justify its being brought before the court.

(*t*) *Down County Case* (1880), 3 O'M. & H. 115, 129.

(*a*) *Haggerston Division Case* (1896), 5 O'M. & H. 68, 88, where the respondent was awarded costs except on those issues as to which the judges differed, though they had differed on one issue which went to the validity of the election.

(*b*) *Westminster Borough Case* (1869), 1 O'M. & H. 89, 96; *Guildford Borough Case* (1869), *ibid.*, 13, 15; *Warrington Borough Case* (1869), *ibid.*, 42, 44; *Coventry Borough Case* (1869), *ibid.*, 97, 111 (in each of which cases no order was made); *Stepney Case* (1886), 4 O'M. & H. 34, 58, where, though the petitioner failed, the scrutiny showing that 200 persons had voted who had no right to vote, no costs were allowed; *Salisbury Borough Case* (1886), 4 O'M. & H. 21, 29, 30; *Islington Borough West Division Case* (1901), 5 O'M. & H. 129, 132, where, on a certain part of the case which, in the opinion of the court, it was fair to investigate, no order was made; *Bodmin Division Case* (1906), 5 O'M. & H. 235, where the petitioners were awarded costs on charges which, in the opinion of the court, they were justified in bringing forward, even though the judges disagreed on these charges.

(*c*) *Buckrose Division Case* (1886), 4 O'M. & H. 110, 119, where a recriminatory case was founded principally on charges of omissions by the petitioner in his return of election expenses, which were admitted. Though the court granted the petitioner relief, he was ordered to pay the costs of the recriminatory case.

(*d*) *Cirencester Division Case* (1893), 4 O'M. & H. 194, 199; but see *Oldham Borough Case* (1869), 1 O'M. & H. 151, 166.

(*e*) *West Riding Southern Division Case* (1869), 1 O'M. & H. 213, *per* MARTIN, B., at p. 216.

(*f*) *Youghal Borough Case* (1869), 1 O'M. & H. 291, *per* O'BRIEN, J., at pp. 295, 299, where the successful petitioner was, on this ground, not awarded the general costs; *Pontefract Borough Case* (1893), 4 O'M. & H. 200, 201, 202.

(*g*) *Norwich Borough Case* (1886), 4 O'M. & H. 84, 91.

(*h*) *Ibid.*, at p. 92.

(*i*) *Lichfield Borough Case* (1880), 3 O'M. & H. 136, 140, where the respondent was awarded the costs of such charges; *Chester Borough Case* (1880), 3 O'M. & H. 148, 149; *Carrickfergus Borough Case* (1880), *ibid.*, 90, 93, where the successful respondent was awarded no costs except on these charges, contained in particulars recklessly prepared by the petitioner, which the petitioner had not attempted to prove; *Canterbury Borough Case* (1880), *ibid.*, 101, 105, where the successful petitioner was awarded no costs on personal charges against the respondent, which he had withdrawn at the hearing; *Ipswich Borough Case* (1886), 4 O'M. & H. 70, 75; *Bodmin Division Case* (1906), 5 O'M. & H. 225, 235.

(*k*) *Bewdley Borough Case* (1880), 3 O'M. & H. 145, 147, where the petitioner was ordered to pay the costs of charges of treating, which he had failed to establish, but was awarded the costs of the charges of bribery, two of which he had proved; *Berwick-upon-Tweed Borough Case* (1880), *ibid.*, 178, 183, where the

SECT. 1. In Parliamentary Elections.

party with regard to the election has been blamable (*l*); or that the petitioners are people of no means, against whom, if defeated, no costs, beyond those covered by the statutory security, could have been recovered (*m*); for such and other analogous reasons the court, in its discretion, will depart from the ordinary rule of costs following the event, and will award the bulk of the costs to a party who has failed on a main issue, or make no order as to costs, or apportion the costs, as to the court seems fit.

Where grounds for making some special order as to costs are afforded by the conduct of one of the parties the court may still, if dissatisfied with the conduct of the opposite party, decline to depart from the ordinary rule (*n*).

Disagreement by judges.

920. Where the judges disagree as to the awarding of costs, no order is made as to them (*o*). But where the judges, though disagreeing on the issue as to the election being avoided or not, do not disagree as to all the charges made in the petition, they may award costs to the respondent on those charges on which they agree, making no order as to the others (*p*).

Order for costs to be paid by the county or borough.

921. If upon the trial of a petition it appears to the election court that it has not been proved that a corrupt practice has been

respondent, though successful on the scrutiny, which was the prayer of the petition, was awarded only two-thirds of the costs on the ground that several of the charges raised by him in his objections had entirely failed; *Ipswich Borough Case* (1886), 4 O'M. & H. 70, 75; *Meath Southern Division Case* (1892), *ibid.*, 130, 142, where the seat was avoided on the ground of undue influence, but the respondent was awarded the costs of charges of bribery and corruption, which the petitioner had failed to prove; *Rochester Borough Case* (1892), *ibid.*, 156, 161; *Meath Northern Division Case* (1892), *ibid.*, 185, 193.

(*l*) *Carrickfergus Borough Case* (1880), 3 O'M. & H. 90, 93, following *Carrickfergus Borough Case* (1869), 1 O'M. & H. 264, 268, 269, and not following the *Limerick Borough Case* (1869), 1 O'M. & H. 260, 263, where FITZGERALD, B., stated that, according to parliamentary practice, unless the petition is held to be frivolous and vexatious, the petitioner cannot be ordered to pay the costs of it; *Windsor Borough Case* (1874), 2 O'M. & H. 88, 93, where the successful respondent was awarded no costs; *Dudley Borough Case* (1874), *ibid.*, 113, 122, where neither party was awarded any costs, on the ground that there had been blamable conduct on either side; *Londonderry Borough Case* (1869), 1 O'M. & H. 274, 279, 280, where, on a scrutiny, time was spent in establishing the employment of certain voters by the respondent, he was disallowed the costs of the time so spent; *Southampton Borough Case* (1895), 5 O'M. & H. 17, 24, where, in awarding costs to an unsuccessful respondent, the court excepted costs of evidence touching an indiscreet speech which respondent had made.

(*m*) *Poole Borough Case* (1874), 2 O'M. & H. 123, 127, 128; *Stepney Borough Case* (1886), 4 O'M. & H. 184; but see *Yellow* v. *Meredith* (1903), 67 J. P. 111 (a municipal election petition), where the respondent was ordered to pay the costs, though it was proved that the petitioners had not found any of the security, but it was not proved that they had not the means of paying the costs of the petition. Compare *Re Long Sutton School Board Election Petition* (1898), 62 J. P. 566.

(*n*) *Evesham Borough Case* (1880), 3 O'M. & H. 192, *per* GROVE, J., at p. 195.

(*o*) *Great Yarmouth Borough Case* (1906), 5 O'M. & H. 176, 199. In *Down County Case* (1880), 3 O'M. & H. 115, 129, where the judges disagreed as to avoidance of the election, they declined, on that ground, to make any order as to costs (*Ipswich Borough Case* (1886), 4 O'M. & H. 70, *per* DENMAN, J., at p. 75).

(*p*) *Haggerston Division Case* (1896), 5 O'M. & H. 68, 88, following *Montgomery Boroughs Case* (1892), 4 O'M. & H. 167, 170.

committed, in reference to the election in question, by or with the knowledge and consent of the respondent, and that the respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more of the following orders with respect to the payment of the whole of the costs of the petition or of such part of the costs as the court may think fit:—

(1) If it appears to the court that corrupt practices have extensively prevailed in reference to such election, the court may order the whole or part of the costs to be paid by the county or borough.

Costs paid by person extensively engaged in corrupt practices.

(2) If it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices, in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by such person or persons or any of them, and may order that, if the costs cannot be recovered from one or more of such persons, they shall be paid by some other of such persons or by either of the parties to the petition (*q*).

Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to such offence or to such person to be paid by such person (*r*).

Costs of Director of Public Prosecutions.

922. The costs incurred by the Director of Public Prosecutions on the trial of an election petition (*s*), including the remuneration of his representative, are, in the first instance, to be paid by the Treasury, and, except in so far as in the case of any prosecution they are paid by the defendant, they are to be treated as expenses of the election court. But if, for any reasonable cause, the court thinks it just to do so, it shall order all or part of such costs to be repaid to the Treasury by the parties, or such of the parties, to the petition, as the court may direct (*t*).

(*q*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 44 (1).

(*r*) *Ibid.*, s. 44 (2). The costs of publication of any matter required to be published by the returning officer are to be paid by the petitioner or person moving in the matter, and are to form part of the general costs of the petition (Election Petition Rules, r. 12).

(*s*) See p. 442, *ante*.

(*t*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 43 (8). As a rule the court will refuse to make an order for payment by a party to the petition of the costs of the Director of Public Prosecutions, though application for such an order is generally made. In *Norwich Borough Case* (1886), 4 O'M. & H. 84, 91, 92, the judges (DENMAN and CAVE, JJ.) stated that the court will not make an order for the payment of the costs of the Director of Public Prosecutions by a petitioner, unless a strong case of misconduct be made out, even though the court considered his case to be so terribly overloaded with charges which he failed to prove that, though successful, he was

SECT. 1. In Parliamentary Elections.

Costs of returning officer.

923. As to the costs of a returning officer who has been made a respondent to a petition, the general practice is that the court exercises its discretion according to the nature of the cause of his having been made a respondent. He has no general immunity from liability to pay costs occasioned by his negligence in connection with an election (*a*). Where the petition complains of an irregularity on the part of a returning officer he may be ordered to pay the costs occasioned by such irregularity even though there may not have been any actual misconduct on his part (*b*), and in like manner he may be held liable in costs for the conduct of his deputy (*c*). But though irregularity affecting the result of the election may be proved against the returning officer by the petition, if he has not been made a party to the petition the court cannot order him to pay the costs of the petition (*d*).

The court may exercise its discretion in such cases by leaving the returning officer to bear his own costs (*e*).

Candidate applying for relief.

924. Where a candidate applies to the High Court or to an election court for relief from the consequences of an act or omission which, but for special circumstances, would constitute an illegal

not awarded costs. But see *Worcester Borough Case* (1892), *ibid.*, 153, 155, where the court made such an order against the petitioner, stating that the petition and particulars contained many charges which, if proved, would have justified the Director of Public Prosecutions in taking steps. Inasmuch as very many, if not most, petitions contain such charges, and inasmuch as the Director of Public Prosecutions is, in any case, obliged to attend the trial, it is submitted that to order an unsuccessful petitioner to pay his costs merely on such grounds, unless the charges are without reasonable foundation, is contrary to the more usual practice of the court, which is to refuse such an order. But where a petition is brought without foundation the court may think it right to make the order (*Kennington Division Case* (1886), *ibid.*, 93, 95). Where, also, an election is declared void on the ground of bribery by an agent and the court are of opinion that, though there has not been *mala fides* on the part of the respondent, there has been much carelessness, bringing about the result which has caused the election to be avoided, and the court have derived valuable assistance from the attendance of the Director of Public Prosecutions, it may think it right to make an order for the payment of his costs by the respondent, on the ground that the respondent has occasioned them (*Hexham Division Case* (1892), *ibid.*, 143, 152).

(*a*) *Wilson* v. *Ingham* (1895), 64 L. J. (Q. B.) 775, *per* DAY, J. WRIGHT, J., the other member of the Divisional Court which decided the case, wished to express no opinion as to the class of cases or kind of misconduct for which a returning officer might be liable in costs. Compare Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 11.

(*b*) *Re Ennis Election Petition*, [1900] 2 I. R. 384; *Islington Borough West Division Case* (1901), 5 O'M. & H. 120, 132—134.

(*c*) *Islington (Borough) West Division Case, supra.*

(*d*) *Re Long Sutton School Board Election Petition* (1898), 62 J. P. 565, *per* WRIGHT, J., at p. 566.

(*e*) *Davies* v. *Kensington (Lord)* (1874), L. R. 9 C. P. 720, following *Hackney Borough Case* (1874), 2 O'M. & H. 77, 87; *Re Athlone Borough Election Petition* (1874), 8 I. R. C. L. 240; *Drogheda Borough Case* (1874), 2 O'M. & H. 201, 211; *Wigtown District Burgh Case* (1874), *ibid.*, 215, 230, 231; *Clare Eastern Division Case* (1892), 4 O'M. & H. 162, 166, *i.e.*, under s. 23 or s. 34 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51).

practice, or of a failure to comply with the law as to the return of election expenses (*f*), he must bear the costs of the relief so obtained (*g*), and if the application is opposed it is the practice to order the applicant to pay the costs of the opposition (*h*).

Discretion of court.

925. The discretion of the election court in dealing with costs is absolute and cannot be interfered with after it has been exercised (*i*).

High Court principles to apply as far as possible.

926. The principles of the rules and regulations of the Supreme Court with regard to costs in actions, causes, and matters in that Court, and, as far as practicable, the rules and regulations themselves, apply to the costs of election petitions and other proceedings under the Parliamentary Elections Act, 1868 (*j*), and the Corrupt and Illegal Practices Prevention Act, 1883 (*k*).

Expenses of witnesses.

927. The reasonable expenses incurred by any person in appearing to give evidence at the trial may be allowed him, according to the scale allowed to witnesses on the trial of civil actions at the

(*f*) See p. 335, *ante*.

(*g*) *Stepney Borough Case* (1892), 4 O'M. & H. 178, *per* CAVE, J., at p. 183. If a respondent delays his application for such relief until the case has been fought out, and he does not give any notice of his intention to apply for it and thereby enable the petitioner to reconsider his position with regard to such charges, he may have to bear the costs entailed by the trial of such charges, though he obtains such relief and succeeds on the petition (*ibid.*, at pp. 183, 184).

(*h*) *Ex parte Hutchinson* (1888), 5 T. L. R. 136; *Ex parte Darlington* (1889), *ibid.*, 183; *Ex parte Fenwick* (1889), *ibid.*, 221. Where the case is important in the public interest, the cost of such opposition, if it is of assistance to the court, ought to be allowed even though it be made not by way of really active opposition (*Ex parte Kyd*, *Times*, 22nd December, 1897). See also *Ex parte Oake*, *Times*, 10th August, 1904.

(*i*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 41; *Lovering* v. *Dawson* (No. 2) (1875), L. R. 10 C. P. 726 (a municipal case).

(*j*) 31 & 32 Vict. c. 125.

(*k*) 46 & 47 Vict. c. 51, s. 44 (3). The section goes on to say that the taxing master is not to allow any such costs, charges, or expenses on a higher scale than that which would be allowed in any action, cause, or matter in the High Court on the higher scale as between solicitor and client. But it would seem that now by virtue of R. S. C., Ord. 65, r. 27 (29), the master is no longer so restricted (see *McIver & Co., Ltd.* v. *Tate Steamers, Ltd.*, [1902] 2 K. B. 184, C. A.; *Re Ermen, Tatham* v. *Ermen*, [1903] 2 Ch. 156; *Cavendish* v. *Strutt*, [1904] 1 Ch. 524; *Re Burroughs, Wellcome & Co.'s Trade Marks* (1904), 22 R. P. C. 164). In a municipal case, *Shrewsbury* (1903), Rogers on Elections, Vol. III., 18th ed., p. 871, these decisions were followed by BUCKNILL, J. The court seldom makes an order for costs on the higher scale. The order was made in the *Kennington Division Case* (1886), 4 O'M. & H. 93, 95, where the court considered the petition to be unfounded and the court thought that the respondent ought to have a full indemnity. In *Hexham Division Case* (1892), *ibid.*, 143, 151, CAVE, J., stated that the court had been informed that the difference between the scales amounted to only 1 per cent.

Where the master on taxation allowed a lump sum under the heading of "instructions for brief," a judge at chambers, on petitioner's application, sent it back to him to be reviewed. On such review, upon an affidavit by respondent's solicitor that he had employed six persons over a period of six days in collecting evidence, the master refused to alter the sum of £200, considering it a proper one. It was held by the court that the master on such review had not allowed a lump sum without going into the items, inasmuch as he had carefully considered how the sum was made up, and that he had properly exercised his

SECT. 1. In Parliamentary Elections.

assizes, by a certificate of the election court or of the prescribed officer (*l*).

The expenses of witnesses which the court allows are to be ascertained and certified by the registrar, or, if he should become incapacitated, by the election court (*m*).

The expenses of witnesses called and examined by the court are to form part of the expenses of providing a court (*n*).

How costs taxed and recovered.

928. Costs are taxed by the master, or, at his request, by any master of the Supreme Court, in the same manner as the costs of an ordinary action. To obtain payment of them out of the money deposited as security, the order under which they are payable must be indorsed by the Lord Chief Justice (*o*).

Registrar's certificate not conclusive as between the parties.

The registrar's certificate is not conclusive as between the parties, but is, as regards the general costs of the petition, subject to the taxation of the master, who is to exercise his discretion as to the expenses to be allowed (*p*).

Office fees.

The office fees payable for inspection, office copies, enrolment, and other proceedings are the same as those, if any, payable for

discretion (*Fleming* v. *Cave* (*Barnstaple Election Petition*) (1875), 32 L. T. 160). It is not necessary that the master should set out items; it is only necessary that he should go through them (*ibid.*, *per* Lord COLERIDGE, C.J.). See also *Tamworth, Penryn and Falmouth, and Southampton Election Petitions* (1870), 22 L. T. 98; *Norwich Election Petition* (1870), *ibid.*, 101.

(*l*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 34. "Prescribed officer" are the words of the section. Hitherto, when used in the Act, they have always been, in this work, translated as "master," in accordance with s. 27, which says that the duties to be performed by the prescribed officer under the Act are to be performed by such one or more of the masters as may be appointed in the manner therein provided (see p. 410, *ante*). By s. 3 of the Act "prescribed" means prescribed by the rules of court. The rule of court purporting to deal with the subject-matter of s. 34 appears to be r. 73, which was substituted for the old r. 40. The rule, it will be observed, makes certain provisions for the certifying of expenses by the registrar; it makes no reference to the master. The words "prescribed officer" in the section appear, therefore, to point rather to the registrar than to the master.

(*m*) Election Petition Rules, r. 73.

(*n*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 34.

(*o*) *Ibid.*, s. 41; Election Petition Rules, r. 55.

(*p*) *McLaren* v. *Home* (1881), 7 Q. B. D. 477. The registrar certifies the expenses to which a witness is entitled, which expenses are primarily payable by the party at whose instance he has attended, but they are not, necessarily, part of the costs properly payable by the other side under an order by the court for payment of costs (see *per* Lord COLERIDGE, C.J., FIELD, J., concurring, in *McLaren* v. *Home*, *supra*). It is submitted that for the purposes of the certificate by the registrar, r. 73, *supra*, comprises those witnesses whose expenses have not been disallowed by the court, who have properly attended, at the instance of a party, though it may turn out unnecessary actually to call them, and that the question as to whether their expenses are properly payable by the party ordered to pay the costs is to be decided by the master on taxation. It will be observed that the words of s. 34 of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), are "expenses incurred by any person in appearing to give evidence at the trial," which words, it is submitted, must include the expenses of persons who have been summoned as witnesses but have not been called; otherwise, there would not be any power, even in the court, to allow the expenses of such persons, seeing that this is the section which purports to provide the means for the allowance of the expenses of persons attending as

like proceedings in the King's Bench Division of the High Court (*q*).

The order of the master for payment of costs has the same force as an order made by a judge, and it may be enforced in like manner as a judge's order (*r*).

Master's order for payment of costs.

929. All claims at law or in equity to money deposited or to be deposited in the Bank of England for payment of costs, charges, and expenses payable by petitioners are disposed of by the High Court or by a judge (*s*). Money so deposited, when no longer needed for securing payment of such costs, charges, and expenses, is to be returned, or otherwise disposed of, as justice may require, by a rule of the High Court or order of a judge (*t*).

Payment out of money deposited.

witnesses; see *Trench* v. *Nolan* (1873), 7 I. R. C. L. 445, *per* KEOGH, J., at pp. 451, 452, and *per* MORRIS, J., at p. 459. The old r. 40, which was in force when that case was decided, was as follows: "The reasonable costs of any witness shall be ascertained by the registrar of the court and the certificate allowing them shall be under his hand." This rule was revoked in 1875, and the present r. 73 was substituted for it. S. 34, it will be observed, says that the expenses may be allowed by a certificate under the hand of the judge or the prescribed officer, and r. 40 said that a certificate allowing the expenses should be under the hand of the registrar, such latter certificate to be the one which is mentioned, in the section, as to be given under the hand of the judge or of the prescribed officer; see *Trench* v. *Nolan*, *supra*. R. 73 would seem to divide the allowance of witnesses' expenses and the certifying for them, leaving the latter function to the registrar when the allowance has been made by the court. But it is submitted that the allowance of them is implied in the ordinary allowance of costs made by the court, unless the court should make any express mention as to the expenses of any witness, the reasonableness of the attendance of any witness being, it is submitted, left to the discretion of the registrar to ascertain, just as the reasonableness of the expenses of the attendance of the witness is left to him to ascertain. In this connection, the concluding words of s. 34, enacting that such expenses are to be deemed costs of the petition, may be observed. If the allowance of the expenses of witnesses is not to be implied from such general order as to costs by the court or from the fact that there is no direction from the court disallowing their expenses, seeing that s. 34 has been interpreted (*McLaren* v. *Home* (1881), 7 Q. B. D. 477) as a provision to enable witnesses to recover their expenses from the party calling them, it would follow, it is submitted, that, in order to be assured of the payment of their expenses, the witnesses, or someone on their behalf, should make an application to the court for the allowance of them; compare *Harwich Borough Case* (1880), 3 O'M. & H. 61, *per* LUSH, J., at p. 71. It will be, however, a safer course in cases where, for any reason, witnesses who have been summoned, have not been called, that the party seeking the costs of the trial shall make application to the court to allow the expenses of such witnesses. Either rule, the old r. 40 or the present r. 73, appears to constitute some variance from the words of s. 34. It will be observed that s. 34 gives the power of allowing the expenses of witnesses by certificate to the court or to the prescribed officer alternatively; accordingly, it is submitted, unless there is an order by the court, express or implied, disallowing the expenses of any witness, the prescribed officer has an original power of dealing with such expenses; see *Trench* v. *Nolan*, *supra*. In the last-named case it was also held that the judge who had tried the petition, in respect of which the question as to the expenses of witnesses arose, still had the power of dealing with these expenses, though he was no longer on the rota.

(*q*) Election Petition Rules, r. 55.

(*r*) *Ibid.*, r. 29.

(*s*) *Ibid.*, r. 63.

(*t*) *Ibid.*, r. 64. Where the election court were asked by a successful

SECT. 1. In Parliamentary Elections.

Such rule or order may be made after such notice of intention to apply, and such proof that all just claims have been satisfied or otherwise sufficiently provided for as the court or judge may require (*a*).

The rule or order may direct payment either to the party in whose name the money is deposited or to any person entitled to receive it (*b*), and, upon such rule or order being made, the amount may be drawn for by the Lord Chief Justice (*c*), whose draft is, in all cases, a sufficient warrant to the Bank of England for all payments made thereunder (*d*).

When the petition is finally concluded by the judgment of the election court and the giving of the certificate under their hands (*e*), if the court have, also, by the same time given their decision as to costs, the right of the party or parties to whom such costs are awarded becomes vested, and the right to have such costs taxed will not be affected by any event happening, after such conclusion of the petition, which, if it had happened earlier, might have caused the petition to abate or drop (*f*).

Non-payment of witness's or respondent's costs by petitioner.

930. If a petitioner neglect or refuse for the space of six months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and if such neglect or refusal be, within one year after such demand, proved to the satisfaction of the court of elections (*g*), every person who has entered into a recognisance, relating to the petition is to be held to have made default in his recognisance. The master is thereupon to certify the recognisance to be forfeited, and it is to be dealt with accordingly (*h*).

respondent, to whom they had awarded costs, for an order for the payment out to him of the security deposited in court to cover his costs, they refused to make the order, though they declared him to be entitled to have the money retained in court as security for his costs, and they gave him liberty to apply after the costs should have been taxed (*Lancaster Division Case* (1896), 5 O'M. & H. 39, 52).

(*a*) Election Petition Rules, r. 65. As part of the proof of the satisfaction of all claims, the practice is to file an affidavit stating that any costs of publication incurred under r. 12 (see p. 475, *ante*) have been satisfied.

(*b*) *Ibid.*, r. 66.

(*c*) *Ibid.*, r. 67.

(*d*) *Ibid.*, r. 68.

(*e*) See pp. 462, 463, *ante*.

(*f*) Election Petition Rules, r. 68; *Marshall* v. *James* (1874), L. R. 9 C. P. 702. The disposal of the costs is merely ancillary to the determination by the court of the issue or issues raised by the petition, and, most probably, even if the court, on giving the judgment and certificate on such issue or issues, had reserved the question of costs they would still have jurisdiction to make a valid order thereon, notwithstanding the happening of such an event as is referred to immediately after they had given their certificate (*per* Lord COLERIDGE, C.J., at pp. 714, 715; *per* BRETT, J., at pp. 717, 718; and *per* GROVE, J., at pp. 718, 719). See also Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 41.

(*g*) The term "court of elections," which is used in the section, appears not to be defined anywhere.

(*h*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 42. As to the manner in which forfeited recognisances are dealt with, see Levy of Fines Act, 1822 (3 Geo. 4, c. 46).

SECT. 1. In Parliamentary Elections.

How the expenses of election commissioners are paid.

931. The expenses of a commission appointed to inquire into the existence of corrupt practices at any parliamentary election or elections in a county or borough (*i*) are paid, in the first instance, by the Treasury and are repayable by such county or borough respectively upon the requisition of the Commissioners of the Treasury, which requisition is conclusive evidence of the amount stated therein and of the payment thereof by the Treasury (*j*). The Commissioners of the Treasury are to forward their requisition to the treasurer of the county, in the case of a county, and to the town clerk, in the case of a city or borough, and they are to require such county treasurer or town clerk, as the case may be, to repay to them within one year the sum named in the requisition, and it is the duty of such county treasurer or town clerk, as the case may be, to comply with the requisition (*k*).

In the case of a county the treasurer is to pay the amount required out of the public funds of the county in exactly the same manner as expenses under the Parliamentary Voters Registration Act, 1843, are payable (*l*).

In the case of a city or borough the requisition is to be laid before the local authority of such city or borough, and the local authority is to certify to the town clerk the sum which is to be paid by each of the parishes or townships within the city or borough as the contribution of such parish or township towards the amount stated in the requisition (*m*). Thereupon, the overseers of every such parish or township are, out of the first moneys to be collected for the relief of the poor, to pay to the town clerk the sum directed in the certificate of the local authority to be the contribution of such parish or township, and the town clerk is, by means of such contributions, to pay the amount required to be paid to the Commissioners of the Treasury (*n*).

Parish partly within borough.

932. If, in the case of any city or borough, there is any parish which happens to be situate partly within and partly without the parliamentary boundary (*o*) of such city or borough, for the purposes of any such contribution, that part of the parish which is situate within such boundary is to be liable to such contribution exclusively of the other part of the parish, and it is to be deemed to be a parish by itself and the overseers of the whole parish are to be deemed to be, also, the overseers of the part so declared to be a parish by itself (*p*).

For the purpose of raising any such contribution in any place so declared to be a parish by itself a separate rate is to be assessed,

(*i*) See p. 463, *ante*.
(*j*) Corrupt Practices Commission Expenses Act, 1869 (32 & 33 Vict. c. 21), s. 2.
(*k*) *Ibid.*, s. 3 (1), (2).
(*l*) *Ibid.*, s. 3 (3); see p. 240, *ante*.
(*m*) *Ibid.*, s. 3 (4).
(*n*) *Ibid.*
(*o*) Parliamentary boundary means the boundary of a city or borough as fixed for the purpose of the election of members to serve in Parliament for such city or borough (Election Commissioners Expenses Act, 1871 (34 & 35 Vict. c. 61), s. 5).
(*p*) Election Commissioners Expenses Act, 1871 (34 & 35 Vict. c. 61), s. 3.

SECT. 1. In Parliamentary Elections.

made, allowed, published, collected, and levied in the same manner as the poor rate, and the overseers are in relation to such separate rate to have the same powers, privileges, and protections, and to be subject to the same obligations as prevail in relation to a poor rate, and they are by means of such separate rate to collect the sum directed by the certificate to be paid to the town clerk as the contribution of such parish, together with such additional sum as the overseers may estimate to be necessary to provide for the expenses of assessing, making, allowing, publishing, levying and collecting such separate rate, and for loss by rates which may be excused or become irrecoverable. The officers ordinarily employed in the collection of the poor rate in the whole of such parish are, if required by the overseers, to collect such separate rate (*q*).

Borough parishes.

933. Where the election commission has been appointed in respect of a county the parishes situate within the parliamentary boundary of any city or borough are not to be liable to any contribution towards the payment of the expenses of such commission, and in such case the foregoing provisions with respect to the payment of such contribution by that part of the parish which happens to be situate within the parliamentary boundary of a city or borough apply, *mutatis mutandis*, to that part which happens to be situate without such boundary (*r*).

Determination of contribution by commissioners.

934. If default is made by any county treasurer or town clerk respectively in complying with such requisition, the Commissioners of the Treasury are to determine the amount to be paid by each of the parishes or townships situate within the city or borough as the contribution of such parish or township towards the amount required, and thereupon the justices in general or quarter sessions assembled having jurisdiction over each of the parishes or townships respectively within such county, city, or borough, are, on the application of the Commissioners of the Treasury, to raise the sum specified in such requisition, together with an additional sum of 10 per cent. by a rate on each of the parishes or townships respectively within such county, city, or borough, and are to pay the amount so raised to the Treasury (*s*). Any rate so made by the justices is to be levied in exactly the same manner as a county rate or contribution to a county rate in any such county, city, or borough, and may be enforced accordingly (*t*).

Where default is made by the county treasurer or by the town clerk of any city or borough, as the case may be, the contribution of any part of a parish so declared to be a parish by itself which is not comprised in a municipal borough having a separate court of quarter sessions to any rate made by the justices in pursuance of the foregoing provisions is to be assessed, raised, and collected in the same manner as any contribution to a county rate of a part of

(*q*) Election Commissioners Expenses Act, 1871 (34 & 35 Vict. c. 61), s. 3.
(*r*) *I bid.*
(*s*) Corrupt Practices Commission Expenses Act, 1869 (32 & 33 Vict. c. 21), s. 3 (5).
(*t*) *I bid.*

any parish the other part of which is comprised in a municipal borough having a separate court of quarter sessions, and is to be subject to all enactments regulating the same, and the foregoing provisions with respect to a separate rate are extended thereto (*a*).

Parishes in quarter sessions boroughs.

935. In the case of any parish comprised in a municipal borough having a separate court of quarter sessions, the amount determined by the Commissioners of the Treasury to be payable by such parish as its contribution is to be paid to the Treasury by the overseers of such parish, and the Commissioners of the Treasury may enforce payment thereof by the overseers by the same means and in the same manner as the council of such borough may enforce payment of any sum which the overseers are ordered by such council to pay towards the borough rate, and for this purpose such part of any parish situate partly within and partly without the municipal borough as is comprised in the municipal borough is deemed to be a "parish," and the overseers of the whole parish are deemed to be the overseers of such part as if they had been appointed by the council to act as overseers therein (*b*).

The powers thus given to the Commissioners of the Treasury in the case of such default by a county treasurer or town clerk respectively are to be in addition to any other remedy which they may have for obtaining payment of the sum named in the requisition (*c*).

Costs to be paid by Treasury.

936. Where any costs or sums other than the costs of a prosecution on indictment are under an order of a court trying a parliamentary election petition, or otherwise under the Corrupt and Illegal Practices Prevention Act, 1883, payable by a county or borough, such costs or sums are to be paid by the Treasury, and the repayment thereof to the Treasury is secured in like manner as the repayment of the expenses of election commissioners (*d*).

SUB-SECT. 9.—*Disqualification of Individuals.*

When candidate's agent guilty.

937. Where, upon the trial of an election petition containing a charge of the commission of a corrupt practice in reference to the election in question, the election court report to the Speaker that a candidate at such election has been guilty by his agents of any corrupt practice thereat, that candidate is not capable of being elected to or of sitting in the House of Commons for such county or borough for seven years after the date of the report, and if he has been elected his election is void (*e*).

(*a*) Election Commissioners Expenses Act, 1871 (34 & 35 Vict. c. 61), s. 4 (1).
(*b*) *Ibid.*, s. 4 (2).
(*c*) *Ibid*, s. 4.
(*d*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 58 (1).
(*e*) *Ibid.*, s. 5. But, where the corrupt practice consists of treating and undue influence, or either of these offences, as to the authorised excuse or exception which obviates such incapacitation and avoidance of the election, see *ibid.*, s. 22, and p. 398, *ante*.

SECT. 1.
In Parliamentary Elections.

Corrupt and illegal practices, undue influence etc. by candidate, or with his knowledge or consent.

938. Where, upon the trial of an election petition respecting an election for a county or borough, the election court, by their report made to the Speaker (*f*), report that any corrupt practice other than treating or undue influence has been proved to have been committed in reference to such election by or with the knowledge of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed by any candidate at such election in reference thereto, such candidate is not capable of ever being elected to or of sitting in the House of Commons for the said county or borough, and, if he has been elected, his election is void (*g*). He is, further, subject to the same incapacities to which he would be subject if, at the date of the said report, he had been convicted on an indictment of a corrupt practice (*h*).

Incapacity of guilty candidate.

939. Where, upon the trial of an election petition containing a charge of the commission of an illegal practice in reference to the election in question, it is reported by the election court that any illegal practice has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, that candidate is not capable of being elected to or of sitting in the House of Commons for such county or borough for seven years next after the date of the report, and if he has been elected his election is void (*i*). He, further, becomes subject to the same incapacities to which he would become subject if at the date of the report he had been convicted of such illegal practice (*k*).

Candidates guilty by agents.

940. If the report is that a candidate at such election has been guilty by his agents of any illegal practice in reference thereto, that candidate is not capable of being elected to or of sitting in the House of Commons for such county or borough during the Parliament for which the election was held, and if he has been elected, his election is void (*l*).

Effect of reporting.

941. Every person reported by an election court to have been guilty of any corrupt or illegal practice at an election, whether he has or has not obtained a certificate of indemnity, becomes subject to the same incapacity to which he would be subject if he had at the date of such election been convicted of the offence of which he is reported of having been guilty (*m*).

(*f*) See p. 461, *ante*.

(*g*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 4.

(*h*) As to what these are, see pp. 528, 529, *post*.

(*i*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 11 (a).

(*k*) *Ibid.* As to what such incapacities are, see pp. 528, 529 *post*. But as to authorised excuses and exceptions, see Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 23, and p. 398, *ante*.

(*l*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 11 (b); but as to authorised excuses and exceptions, see *ibid.*, ss. 22, 23, 29 (6), and p. 398, *ante*.

(*m*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 38 (5). As to what such incapacity is, see pp. 528 *et seq.*, *post*.

Special persons.

942. Where a barrister, or a solicitor, or a person belonging to any profession the admission to which is regulated by law, is reported by the election court to have been guilty of any corrupt practice in connection with an election, it is the duty of the Director of Public Prosecutions, whether such person has or has not received a certificate of indemnity, to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognisance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal, may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession (*n*).

Justice of the peace.

943. If the election court report of a justice of the peace that he has been guilty of any corrupt practice in connection with an election, it is the duty of the Director of Public Prosecutions, whether such justice of the peace has or has not received a certificate of indemnity, to report the case to the Lord Chancellor together with such evidence as may have been given of such corrupt practice (*o*). If a person, who by virtue of being or of having been a mayor of a borough, acts as a justice of the peace, the Lord Chancellor has the same power to remove him from being a justice of the peace as if he were named in a commission of the peace (*p*).

Licensed person.

944. If it appears to an election court that a licensed person has knowingly suffered any bribery or treating, in reference to any election, to take place upon his licensed premises the election court are (subject to the provisions (*q*) as to a person having an opportunity of being heard by himself and of producing evidence before being reported) to report him (*a*).

Whether such licensed person has or has not obtained a certificate of indemnity, it is the duty of the Director of Public Prosecutions to bring such report before the licensing justices from whom or on whose certificate such person obtained his licence, and the licensing justices are to cause the report to be entered in the proper register of licences (*b*). Where, accordingly, an entry is made in the register of licences of any such report respecting any licensed person, such entry is to be taken into consideration by the licensing justices in determining whether they will or will not grant to such person a renewal of his licence or certificate, and the entry may be, if the justices think fit, a ground for refusing such renewal (*c*).

Prohibition from voting.

945. Every person who in consequence of conviction or of the report of any election court or election commissioners under the

(*n*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 38 (7).
(*o*) *Ibid.*, s. 38 (6).
(*p*) *Ibid.*
(*q*) See p. 469, *ante*.
(*a*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 38 (8) (b).
(*b*) *Ibid.*
(*c*) *Ibid.*, s. 38 (8) (c).

SECT. 1. In Parliamentary Elections.

Corrupt and Illegal Practices Prevention Act, 1883, or under the Corrupt Practices (Municipal Elections) Act, 1872 (*d*), or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act, for the time being, in force relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote is to be void (*e*).

Definiteness of report.

946. In order that any person should become subject to any incapacities or disabilities in consequence of the report of an election court, the report must contain, or must be equivalent to, a definite finding that he is guilty of the offence or offences entailing such incapacities or disabilities. He does not become subject thereto by reason only of a report stating facts from which his guilt may be inferred (*f*).

Perjured evidence.

947. Where a person has become subject to any incapacity by reason of a report of an election court, and any witness who gave evidence against such person upon the proceeeding on which such report was made is convicted of perjury in respect of that evidence, the person who has become incapacitated may apply to the High Court, and the court, if satisfied that the report, so far as respects such person, was based upon perjury, may order that such incapacity shall thenceforth cease, and it shall cease accordingly (*a*).

SECT. 2.—*In Municipal Elections.*

SUB-SECT. 1.—*The Commissioner and his Jurisdiction.*

Special election court.

948. A special "election court" has been constituted by statute (*b*), for the trial of municipal election petitions (*c*).

(*d*) 35 & 36 Vict. c. 60. This Act is repealed as regards England by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 5, Sched. I., but it is still in force in Scotland and Ireland (*ibid.*, s. 260 (2)).

(*e*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 23, Sched. III., Part II., applying Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 37.

(*f*) *Grant* v. *Pagham Overseers* (1877), 3 C. P. D. 80; see also *Drinkwater* v. *Deakin* (1874), L. R. 9 C. P. 626, *per* Lord COLERIDGE, C.J., at pp. 636, 637.

(*a*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 46.

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

(*c*) *Ibid.*, s. 92 (1). Where a person has been duly elected in form and so as to render the office to which he has been elected in fact full of him, though he was not qualified for election and is not qualified for the holding of such office, a mandamus for the holding of a new election will not lie, at any rate not if the office is such that a writ of *quo warranto* would lie in respect of it (*R.* v. *Beer*, [1903] 2 K. B. 693, following *R.* v. *Chester Corporation* (1855), 25 L. J. (Q. B.) 61, and *R.* v. *Welshpool Corporation* (1876), 35 L. T. 594). It is submitted that there is a distinction between being not qualified and being disqualified (see Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 9, 11, 12, 41), and that if a person who is not qualified within s. 11 be elected his election may not be questioned by way of petition, though his holding the office may be questionable by *quo warranto*. The office of sheriff of a city is not questionable by an election petition. This was admitted by the proposed petitioner in *Pope* v. *Bruton* (1900),

This election court consists of a single commissioner (*d*). A particular commissioner is assigned *ad hoc* in the case of each petition (*e*). He has a very wide jurisdiction as far as the particular case is concerned, and has very ample powers (*f*). He sits without a jury (*g*).

The commissioner.

A commissioner, who holds his office for a year (*h*), must be a barrister (*i*) of not less than fifteen years' standing (*k*). He may not be a member of the House of Commons (*l*); nor may he hold any office or place of profit under the Crown (*m*), other than that of recorder (*n*). A barrister is not qualified to act as a commissioner (*n*) for the trial of any petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit on which he practises as a barrister (*o*).

Tenure of office and qualifications.

949. The appointment of commissioners lies with the judges for the time being on the rota (*p*) for the trial of parliamentary election petitions, who have before them for the purpose of dealing with the matter a list of all the municipal election petitions at issue, called the "municipal elections list" (*q*). The judges for the time being on such rota, or any two of those judges, may annually appoint as many barristers, not exceeding five, as they may think necessary, to be commissioners for the trial of municipal election petitions. And they must from time to time assign to be tried by each commissioner the petitions relating to the different elections other than parliamentary petitions which are liable to be questioned by

Appointment.

17 T. L. R. 182, where BRUCE and DARLING, JJ., overruling KENNEDY, J., at chambers, ordered the petition to be taken off the file. It appeared that the proper remedy was by *quo warranto*, a writ which issues out of the King's Bench Division to inquire by what authority a person who claims or usurps his office supports his claim.

Quo warranto is still the remedy in the case of a non-corporate office, such as vestry clerk; but there must be more than mere acceptance of the office (*R.* v. *Tidy*, [1892] 2 Q. B. 179). Compare *Budge* v. *Andrews* (1878), 3 C. P. D. 510, 520, decided under an earlier Act; *Line* v. *Warren* (1885), 14 Q. B. D. 548, C. A.; *R.* v. *Welshpool Corporation* (1876), 35 L. T. 594; *Yates* v. *Leach* (1874), L. R. 9 C. P. 605; *Monks* v. *Jackson* (1876), 1 C. P. D. 683; *Pritchard* v. *Bangor Corporation* (1888), 13 App. Cas. 241.

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 92 (1).

(*e*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 36 (2).

(*f*) See p. 512, *post*.

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c, 50), s. 92 (1).

(*h*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 36 (2).

(*i*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 92 (1).

(*k*) *Ibid.*, s. 92 (2).

(*l*) *Ibid.*

(*m*) This does not include the office of a revising barrister whose place is not under the Crown; see p. 218, *ante*. For the meaning of the phrase "place of profit under the Crown," see title PARLIAMENT.

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 92 (2).

(*o*) *Ibid.*, s. 92 (3).

(*p*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 92 (4), as amended by Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 36 (2).

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 91 (1), 92 (4).

SECT. 2. In Municipal Elections.

petition (*r*); except those in which the question raised by the petition is before trial stated as a special case, with a view to its being heard by the High Court (*s*).

If a commissioner to whom the trial of a petition is assigned dies or becomes incapable of acting, or declines to do so, the said judges or two of them may assign the trial to be conducted and continued by another of the commissioners (*a*).

A commissioner's court is a court of record (*b*). For this reason its order can only be proved by production of the record (*c*); and for the same reason the commissioner can commit to prison any person who is guilty of contempt of court in the face of the court (*d*).

Jurisdiction to make inquiries.

950. As the commissioner will have eventually (*e*) to make a report to the High Court as to whether (*inter alia*) corrupt or illegal practices or the offences of illegal payment, employment, or hiring have extensively prevailed (*f*), it follows that he has jurisdiction to inquire into any facts which may tend to throw a light upon the possibility of there having been any such extensive prevalence, even though those facts be not relevant to the issues raised between the petitioner and the respondent to the petition.

Adjournment.

951. The commissioner has a discretion to adjourn the trial from time to time and from any one place to any other place within the borough or place where it is held (*g*).

No appeal, but power to state case.

952. There is no appeal from any decision of the commissioner upon any question either of law or of fact; but he has power to

(*r*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 36 (2).

(*s*) See p. 512, *post*.

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 92 (5).

(*b*) Because the commissioner has, with an exception, as to which see p. 515, *post*, the same powers and privileges as those which judges have on the trial of parliamentary election petitions (*ibid.*, s. 92 (6)). See p. 411, *ante*, and also the judgment of JESSEL, M.R., in *R.* v. *Maidenhead Corporation* (1882), 9 Q. B. D. 494, C. A., at p. 500. That case was decided under the Corrupt Practices (Municipal Elections) Act, 1872 (35 & 36 Vict. c. 60), s. 14 (5), the effect of which, as regards the point in question, is the same as that of the above-quoted sub-section.

(*c*) *Ibid.*

(*d*) 2 Bac. Abr., tit. Courts, E. See title CONTEMPT OF COURT, Vol. VII., p. 279.

(*e*) See p. 518, *post*.

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (5); Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), ss. 8 (1), 18. Note that in the case of corrupt practices the question is whether corrupt practices have extensively prevailed; in the case of illegal practices and illegal payment etc. the question is whether these things have so extensively prevailed that they may reasonably be supposed to have affected the result of the election. So that in the latter case, where the majority is very large, it may sometimes be apparent on the face of the matter that there is no need to inquire into the facts relating to illegal practices and illegal payments etc. other than those at issue between the parties. Where corrupt practices are in question, such facts must always be investigated.

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (3).

reserve any question of law as to the admissibility of evidence or otherwise for the consideration of the High Court, if such question appears to him to require such consideration (*h*).

Provision for the court, and proper attendance upon the commissioner.

953. The town clerk or other authority, as the case may be (*i*), must provide proper accommodation for holding the election court, and any expenses incurred by him for this purpose are to be paid out of the borough fund or borough rate (*k*).

All chief and head constables, superintendents of police, headboroughs, gaolers, constables, and bailiffs must give their assistance to the commissioner in the execution of his duties; and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto by the commissioner's orders he will be liable to a fine not exceeding £5 for every day during which the default continues (*l*).

Registrar and officers.

954. The commissioner is accompanied (*m*) by the registrar (*n*),

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (8); see p. 517, *post*. A case of a municipal petition in which the commissioner reserved a question of law is *Re Gloucester Municipal Election Petition*, 1900, *Ford* v. *Newth*, [1901] 1 K. B. 683. The election was there alleged to be void on the ground that the respondent had an interest in a contract with the corporation, and the High Court held that he had such an interest.

(*i*) See, in the case of petitions relating to elections to a county council, p. 449, *post*, and, in the case of petitions relating to other elections, pp. 502, 503, *post*.

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 99 (1).

(*l*) *Ibid.*, s. 99 (2).

(*m*) By s. 99 (3) of the same Act the election court may employ officers and clerks as prescribed. The matter is dealt with in rr. 50—52 of the Municipal Election Petition Rules, 1883.

(*n*) The registrar is an officer who shall be appointed for each court for the trial of a municipal election petition by the election judges at the same time that they assign the petition to the commissioner; he must attend at the trial in like manner as the clerks of assize and arraigns attend at the assizes. He, by himself, or, in case of need, his sufficient deputy, must perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him (Municipal Election Petition Rules, 1883, r. 50).

The duties of the registrar, in practice, include the following: (i.) to arrange with the town clerk or other authority (see p. 489, *ante*) for the proper reception of the commissioner, the provision of a suitable building for the hearing of the petition and of a suitable private room for the use of the commissioner; (ii.) to arrange likewise for the presence of an adequate force of police; (iii.) to arrange likewise for a proper supply of stationery, including note-books; (iv.) to arrange for the provision of a suitable deed-box or other receptacle for the reception of all documents relating to the case; (v.) to be present throughout the proceedings in court; (vi.) to keep carefully all documents put in and all other documents relating to the case, and to produce the same speedily when required; (vii.) to read the petition aloud in open court at the commencement of the proceedings; (viii.) to keep a note-book, in which he is to enter the names, occupation, addresses etc. of each witness, and also to enter any orders or directions given by the commissioner; (ix.) to provide for the printing of an adequate supply of all the prescribed forms, which are—(a) form of order of commissioner to compel a person to attend as a witness, (b) form of notice to a person to show cause why he should not be reported, (c) form of certificate of indemnity, (d) form of certificate of expenses of witness; (x.) to compel the attendance of any witnesses whenever such attendance is required by

SECT. 2. In Municipal Elections.

Remuneration of commissioner and his staff.

the crier and officer of the court (*o*), and an official shorthand writer (*p*).

955. The remuneration and allowances to be paid to the commissioner for his services in respect of the trial of an election petition, as well as those to his staff and the registrar, are fixed by a scale (*q*), which is made and may be varied by the election judges on the

the commissioner; (xi.) to notify to any person when so directed by the commissioner that he must show cause why he should not be reported; (xii.) to certify the reasonable expenses of witnesses after hearing all parties concerned; (xiii.) to draw up and sign the postea to the petition.

It does not appear that he has any duty in relation to the stamping of documents.

It is not necessary, but it is usual, for the registrar to be a barrister.

(*o*) This officer is appointed by the commissioner (Municipal Election Petition Rules, 1883, r. 51). His duties are to administer the oath to every witness according to due form of law, and to act as clerk to the commissioner.

(*p*) The shorthand writer to attend at the trial of the petition is the shorthand writer to the House of Commons for the time being or his deputy, and the master must send him a copy of the notice of trial (Municipal Election Petition Rules, 1883, r. 52). This shorthand writer must attend the trial and must be sworn by the commissioner faithfully and truly to take down the evidence given at the trial. He must take down the evidence at length. A transcript of the notes of the evidence taken by him must, if the commissioner so directs, accompany the certificate of the commissioner. His expenses, according to a prescribed scale, are to be treated as part of the expenses incurred in receiving the court (Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 99 (4)). It does not appear that the commissioner has any other express power to order a transcript of the notes than that here given, and which would not seem to apply to a case where the report required no explanation—*e.g.*, where the report was that no corrupt or illegal practices were proved at all, nor was there any reason to suppose that any such had prevailed.

(*q*) The matter is one which is sometimes, as will hereafter appear (see p. 522, *post*), of importance to the parties, and not only to the local authority. The following is the effect of the Treasury Minute of 30th April, 1883, so far as it relates to the barrister, registrar, and staff:—"There will be paid to the barrister" (*i.e.* the commissioner) "for his services in respect of the trial of a petition the sum of fifteen guineas for each day during which he is engaged, the said sum being in full for his fee and for allowances for his expenses of locomotion and living while so engaged. There will be paid to the registrar of the court the sum of three guineas for each day while he is engaged on the trial or necessarily engaged in travelling to or from the place of trial, and a further sum of one guinea for each day while so engaged, including Sundays, during the time the trial lasts, to cover his expenses of living. There shall be paid to the crier of the court the sum of one guinea for each day when he is so engaged on the trial or in travelling to or from the place of trial, including Sundays, during the time the trial lasts. There shall be paid to each shorthand writer (see p. 514, *post*), whom it may be found necessary to employ the sum of two guineas for each day he is in attendance, and also the further sum not exceeding 8*d.* per folio for transcribing his notes. There shall be paid to each shorthand writer a sum not exceeding two guineas a week for personal expenses, unless he is resident in the borough where the trial is held. There shall be paid to each clerk not exceeding three in number whom it may be found necessary to send to transcribe the shorthand writer's notes a sum not exceeding one guinea per week for expenses unless he is resident in the borough where the inquiry is held. In addition to the sums above specified there shall be paid to the registrar, crier, shorthand writers, and clerks their actual expenses of locomotion according to an account to be rendered to the Lords Commissioners of His Majesty's Treasury." The precedents show that every day necessarily spent in travelling is to be reckoned as a day during which the commissioner is engaged, and so is a day which is spent in settling the report, certificate etc., after the conclusion of the trial and

rota for the trial of parliamentary election petitions with the approval of the Treasury. The remuneration and allowances are paid in the first instance by the Treasury (*a*). But they must be repaid to the Treasury out of the borough fund or borough rate (*b*), or out of the county fund, as the case may be (*c*).

Title of court.

956. The title of the commissioner's court may be as follows: "Court for the trial of a municipal election petition for such and such a borough (or as the case may be) between such and such a person petitioner and such and such a person respondent." It is sufficient so to entitle the proceedings in that court (*d*). The petition itself, however, is a petition to the High Court, and should be entitled accordingly (*e*).

SUB-SECT. 2.—*Presentation of a Petition.*

On what ground petition may be presented.

957. A municipal election (*f*) may be questioned by an election petition on the following grounds or any of them :—

(1) That the election was, as to the borough or ward, wholly avoided by general bribery, treating, undue influence, or personation (*g*).

(2) That the election was avoided by corrupt practices or offences against Part IV. of the Municipal Corporations Act, 1882 (*h*), including an illegal practice (*i*) committed at the election.

(3) That the person whose election is questioned was at the time of the election disqualified (*j*).

(4) That such person was not duly elected by a majority of lawful votes (*k*).

the delivery of the judgment. A Sunday may be reckoned as a day upon which the commissioner is engaged, if he is in fact engaged upon such Sunday. This is also shown by the precedents.

(*a*) On an application made to the Lords Commissioners of the Treasury. The application should be accompanied by an account setting out the remuneration earned in accordance with the Treasury Minute.

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 101 (1). As to the circumstances in which either of the parties to the petition may be ordered to bear these expenses, see p. 522, *post*.

(*c*) See Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75, and note the words "in such terms and with such modifications as are necessary to make them applicable to . . . the provisions of this Act." There is no special provision as to these expenses in the Local Government Act, 1894 (56 & 57 Vict. c. 73), but in s. 48 thereof all necessary modifications are similarly no doubt intended.

(*d*) Municipal Election Petition Rules, 1883, r. 49.

(*e*) *Ibid.*, r. 5. See p. 499, *post*.

(*f*) The following provisions apply also to the elections of chairmen and councillors of county councils (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75; and see p. 499, *post*).

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 87 (1) (a).

(*h*) 45 & 46 Vict. c. 50.

(*i*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 8 (1).

(*j*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 87 (1). As to what constitutes disqualification, see *ibid.*, s. 12, and Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 18.

(*k*) *Ibid.* But, apparently, an election of a parish councillor at which no poll

SECT. 2. In Municipal Elections.

(5) That illegal practices or offences of illegal payment, employment, or hiring committed, in reference to the election, for the purpose of promoting the election of a candidate thereat, so extensively prevailed that they may be reasonably supposed to have affected the result of the election (*l*).

Elections questionable by petition.

The elections thus questionable are elections to corporate offices (*m*). Corporate office means the office of mayor, alderman, councillor, and elective auditor (*n*). A municipal election may not be questioned on any one of these grounds except by an election petition (*o*).

How general rules made.

958. General rules for the purposes of the Municipal Corporations Act, 1882, Part IV., are made by the Rule Committee (*p*). Such rules are published by copies thereof being put up at the master's office (*q*). There is a body of rules called Municipal Election General Rules, which were made in 1883 by the judges on the rota for the trial of parliamentary election petitions, under the authority given to them for that purpose, which rules have the same effect as statutory provisions (*r*). No additional rules dealing specially with municipal election petitions have been made by the Rule Committee.

Who may present petition.

959. An election petition may be presented by four or more persons who voted or had a right to vote at the election, or else by a person alleging himself to have been a candidate at the election (*s*).

Mode of presentation.

960. The presentation of a municipal election petition is made in a similar manner to that in which the presentation of a

has had to be taken is not questionable on this ground (Parish Councillors Election Order, 1901, s. 18); see note (*p*), p. 501, *post*.

(*l*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 18.

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 77.

(*n*) *Ibid.*, s. 7 (1). In the case of county councils the last-named office does not apply, as their accounts are audited by district auditors appointed by the Local Government Board (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 71 (3)). The election of a sheriff of a city is not questionable by petition, but by *quo warranto* (*Pope* v. *Bruton* (1900), 17 T. L. R. 182).

(*o*) *Ibid.*, s. 87 (2); *R.* v. *Morton*, [1892] 1 Q. B. 39. Though the election itself may not be questioned on any one of these grounds except by election petition, yet if the disqualification of a person elected, though existing at the time of such election, be likewise a disqualification for his holding the office to which he has been elected, his right so to hold office may be questioned by *quo warranto* (*R.* v. *Beer*, [1903] 2 K. B. 693).

(*p*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 30 (b).

(*q*) Municipal Election Petition Rules, r. 70; Statutory Rules and Orders Revised, Vol. XIII., Supreme Court, England, pp. 656 *et seq.*

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 100 (1)—(3). By the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 30 (b), however, the power of making rules (and, presumably, similarly, as in respect of parliamentary election petitions, the power of revoking and of altering rules, though these words are not expressed in s. 30 (b)), seems to have been taken from the judges on the rota and to have been transferred to the Rule Committees.

(*s*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 88 (1).

SECT. 2. In Municipal Elections.

parliamentary election petition is made (*t*). The master who performs the duties of the prescribed officer with regard to municipal election petitions is the official who, for the time being, performs such duties with regard to parliamentary election petitions (*u*). The master must send forthwith a copy of the petition to the town clerk, who is forthwith to publish it in the borough (*x*). With the copy of the petition the master must send to the town clerk the names of the agents of the petitioner and respondent, if any, and the addresses of the petitioner and respondent, if they have been given as prescribed (*y*), and the town clerk must publish these particulars forthwith along with the petition (*a*). The costs of such publication, or of other publications required to be made by the town clerk, are paid by the petitioner or person moving in the matter, and form part of the general costs of the petition (*b*).

Form and contents of petition.

961. The provisions as to the contents and form of and the signing of the petition are similar to those prescribed in the case of parliamentary election petitions, with the exception of the title (*c*).

Time within which it must be presented.

962. The petition must be presented within twenty-one days after the day on which the election was held (*d*). But if it complains of the election on the ground of corrupt practices and specifically alleges a payment of money or other reward to have been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried (*e*).

When illegal practices alleged.

A petition complaining of the election on the ground of an illegal practice may be presented at any time before the expiration of fourteen days after the day on which the town clerk receives the

(*t*) Municipal Election Petition Rules, r. 1. See p. 412, *ante*.

(*u*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 100 (5); Municipal Election Petition Rules, r. 1. See p. 410, *ante*.

(*x*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 88 (3). Though, as in the case of parliamentary election petitions, it is only obligatory upon the petitioner to leave one copy of the petition on presentation, yet, similarly the practice is to leave four copies.

(*y*) See p. 496, *post*.

(*a*) Municipal Election Petition Rules, r. 12.

(*b*) *Ibid.*

(*c*) The petition will be entitled:—In the High Court of Justice. The Municipal Corporations Act, 1882. Election for [*state the place and office for which election held*] holden on the of A.D. (Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 88 (3); Municipal Election Petition Rules, rr. 2, 3, 4, 5, 6. The name of any other Act of Parliament which may also govern the election in question, according to the nature of the office to which it relates, *e.g.*, the Local Government Act, 1888, or, if the petition alleges an illegal practice, the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, should also be inserted in the title.

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 88 (4).

(*e*) *Ibid.*

SECT. 2. In Municipal Elections.

return and declaration respecting election expenses by the candidate to whose election the petition relates, or where there is an authorised excuse for failing to make the return and declaration, within fourteen days after the date of the allowance of the excuse (*f*).

A petition complaining of the election on the ground of an illegal practice and specifically alleging a payment of money or other act made or done since the election by the candidate elected thereat or by his agent, or with the privity of the candidate in pursuance or in furtherance of such illegal practice, may be presented at any time within twenty-eight days after the date of such payment or act, whether or not any other petition against that person has been previously presented or tried (*g*).

Time within which amendment may be made.

963. Any petition presented within the time limited may, with leave of the High Court, be amended for the purpose of questioning the election upon an allegation of an illegal practice within the time which is allowed for the presentation of a petition questioning the election on such an allegation (*h*).

The foregoing provisions as to the time within which a petition alleging, either originally or by amendment, an illegal practice may be presented apply even though the illegal practice is also a corrupt practice (*i*).

Security for costs.

964. At the time of presenting a petition, or within three days afterwards, the petitioner must give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf or to any respondent (*k*). It must be given either by a deposit of money or by recognisance entered into by not more than four sureties, none of whom may be the petitioner or any one of the petitioners (*l*), or partly in one way and partly in the other (*m*).

(*f*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 25 (1). As to the time at which a petition relating to an election in respect of a metropolitan borough council, rural or urban district, or parish council, or a poll consequent upon a parish meeting alleging an illegal practice, may be presented, see pp. 499 *et seq.*, *post*.

(*g*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 25 (2). The above provisions are applied likewise to elections in the City of London and to county council elections (see pp. 499 *et seq.*, *post*).

(*h*) *I bid.*, s. 25 (3).

(*i*) *I bid.*, s. 25 (4).

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 89 (1).

(*l*) *Pease* v. *Norwood* (1869), L. R. 4 C. P. 235.

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 89 (2). The following is a form of recognisance set out in the Municipal Election Petition Rules, r. 25:—

Be it remembered that on the day of , in the year of our Lord 19 , before me [*name and description*] came A. B., of [*name and description as above prescribed*] and acknowledged himself [*or* severally acknowledged themselves] to owe to our sovereign lord the King the sum of five hundred pounds [*or* the following sums] (that is to say) the said C. D. the sum of £ , the said E. F. the sum of £ , the said G. H. the sum of £ , and the said J. K. the sum of £ , to be levied on his [*or* their respective] goods and

The security will be to such amount, not exceeding £500, as the High Court or a judge thereof may on summons order (*n*). In the absence of such order, it may be given to any amount not less than £300. But the High Court or a judge thereof may, on summons taken out within five days from the service of the notice of the nature and amount of the security, order the security to be increased, within a time to be named in the order, by further security to be given in the prescribed manner (*o*) for a further amount not exceeding in all £500 (*p*). In default of compliance with such order no further proceedings can be had on the petition (*q*).

Amount of security.

The security need not be more than the amount thus prescribed, though there may be more than one respondent (*r*). Where it is made by way of deposit the money is paid into the Bank of England to the account of "The Municipal Corporations Act, 1882, Security Fund," which is vested in the Lord Chief Justice for the purposes for which security is required (*s*). A bank receipt or certificate for the payment must be left forthwith at the master's office (*t*). It is filed by the master, and the amount together with the petition to which it relates are entered by him in a book which may be inspected by all parties concerned (*a*).

Amount need not be greater though more than one respondent.

965. All claims at law or in equity to money so deposited or to be deposited are to be disposed of by the High Court or a judge thereof (*b*). Money so deposited, when no longer needed for securing payment of such costs, charges, and expenses, is to be returned, or otherwise disposed of, as justice may require, by rule of the High Court or order of a judge thereof (*c*).

Payment out of deposit.

chattels, lands, and tenements, to the use of our said sovereign lord the King, his heirs and successors.

The condition of this recognisance is that if [*here insert the names of all the petitioners, and if more than one, add, or any of them*] shall well and truly pay all costs, charges and expenses in respect of the election petition signed by him [*or* them] relating to the [*here insert the name of the borough*] which shall become payable by the petitioner [*or* petitioners, or any of them], under the Municipal Corporations Act, 1882, to any person or persons, then this recognisance to be void, otherwise to stand in full force

(Signed)
[*Signature of Sureties*].

Taken and acknowledged by the above named [*name of sureties*] on the at , before me,

C. D.,
A justice of the peace [*or as the case may be.*]

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 89 (2).
(*o*) See p. 494, *ante*.
(*p*) Municipal Election Petition Rules, r. 26.
(*q*) *Ibid.* It is submitted that if the further security is given by recognisances, and if the original security has also been so given, the total number of sureties for the whole amount must not exceed four. Otherwise, it is submitted, there would be a contravention of s. 89 (2); see p. 494, *ante*.
(*r*) *Pease* v. *Norwood* (1869) L. R. 4 C. P. 235.
(*s*) Municipal Election Petition Rules, r. 16.
(*t*) *Ibid.* As to the master, see p. 493, *ante*.
(*a*) *Ibid.*, r. 17.
(*b*) *Ibid.*, r. 18.
(*c*) *Ibid.*, r. 19.

SECT. 2. In Municipal Elections.

The rule or order may be made after such notice of intention to apply for it and upon such proof that all just claims have been satisfied or otherwise sufficiently provided for as the court or judge may require (*d*), and may direct payment either to the party in whose name the money is deposited or to any person entitled to receive it (*e*), and, upon such rule or order being made, the amount may be drawn for by the Lord Chief Justice (*f*), whose draft is, in all cases, a sufficient warrant to the Bank of England for all payments made thereunder (*g*).

Notices to be served with presentation of petition.

966. With the petition there must be left at the master's office a writing signed by or on behalf of the petitioner or petitioners giving the name of some person entitled to practise as a solicitor of the High Court who is authorised to act as his or their agent, or stating that he or they acts or act for himself or themselves, as the case may be, and, in either case, giving an address within three miles of the General Post Office at which notices may be left. If no such writing be left or no such address be given, notice of objection to the recognisances (*h*) and all other notices may be given and all proceedings may be served by sticking them up at the master's office (*i*).

Who may be respondent.

967. Any person whose election is questioned by a petition, and any returning officer of whose conduct a petition complains, may be made a respondent to it (*k*). Any person who might have been a petitioner in respect of the election in question may apply to the election court or to the High Court to be admitted as a respondent to oppose the petition, if, before the trial of a petition, a respondent (other than a returning officer) dies, resigns, or otherwise ceases to hold the office to which the petition relates, or if he gives the prescribed notice (*l*) that he does not intend to oppose the petition (*m*). Whenever any one of these events happens, notice of it must be given in the borough (*n*). In the case of the death of a respondent, any person entitled to be a petitioner may give notice of the fact in the borough by having it published in, at least, one newspaper in circulation there, if there be any, and by leaving a copy of the

(*d*) Municipal Election Petition Rules, r. 20. As part of the proof of the satisfaction of all claims there ought to be an affidavit stating that any costs of publication incurred under r. 12 (see p. 493, *ante*) have been satisfied.

(*e*) *Ibid.*, r. 21,

(*f*) *Ibid.*, r. 22.

(*g*) *Ibid.*, r. 23.

(*h*) See p. 498, *post.*

(*i*) Municipal Election Petition Rules, r. 9.

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 88 (2). For the purpose of this sub-section the term "returning officer" includes, in the case of a petition against the election of a parish councillor, the chairman of a parish meeting held for the election of parish councillors (Parish Councillors Election Order, 1901, r. 36 (2 b), Statutory Rules and Orders Revised, Vol. IX., Parish Council and Parish Meeting, England, pp. 80, 92). As to the nature of the misconduct which will form a ground of petition against a returning officer, see p. 417, *ante.*

(*l*) See p. 497, *post.*

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 97 (1).

(*n*) *Ibid.*

notice, signed by him or on his behalf, with the town clerk and also with the master (*o*).

Time for application.

968. The application to be admitted as a respondent in any one of the events mentioned is to be made within ten days after such notice is given or within such further time as the High Court or a judge thereof may allow (*p*).

To what court made.

The application may be made to the election court or to the High Court, and any person so applying is to be admitted as a respondent, but the number of persons so admitted may not exceed three (*q*).

Notice by respondent of non-opposition.

969. A respondent desirous of giving notice of his intention not to oppose the petition must do so by leaving such notice in writing, signed by him, at the master's office (*r*). The master must send forthwith by post a copy thereof to the petitioner or his agent, and, likewise, to the town clerk, who must cause it to be published in the borough (*s*).

The giving of such notice by a respondent does not of itself cause him to cease to be a respondent (*t*). But a respondent who has given such notice is not allowed to appear or act as a party against the petition in any proceedings upon it (*a*).

Notice by respondent of appointment of agent.

970. Any person elected to any municipal office may, at any time after he is elected, send to or leave at the master's office a writing signed by him or on his behalf appointing a person entitled to practise as a solicitor in the High Court to act as his agent in case a petition should be presented against him, or else stating that he intends to act for himself, and in either case giving an address within three miles of the General Post Office

(*o*) Municipal Election Petition Rules, r. 64. It is noticeable that the death of a respondent is the only event which the rule specifies as being that of which a person desirous of being substituted as a respondent may himself give notice. In this respect it differs from the corresponding provision contained in the Parliamentary Election Petition Rules (see p. 416, *ante*), by which a person desirous of being substituted as a respondent may give notice of the happening of any of the prescribed conditions except that of the respondent having given due notice of his intention not to oppose the petition. It will have been observed that in the Act itself it is laid down that the happening of any one of these events is to be made known; but, as far as specific provision is made by the rules, the publication, in the case of a respondent resigning or otherwise ceasing to hold office, would seem to be only provided for by including those events in that general event of a respondent intending not to oppose the petition, of which he is bound to give notice, unless the provision for publication in the case of the death of a respondent is taken to apply to these other cases also.

(*p*) Municipal Election Petition Rules, r. 67.

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 97 (1).

(*r*) Municipal Election Petition Rules, r. 65. The rule does not appear to specify any time within which the notice must be given, as is specified in the corresponding provision in the Parliamentary Election Petition Rules. As to the master, see p. 493, *ante*.

(*s*) Municipal Election Petition Rules, r. 66.

(*t*) *Yates* v. *Leach* (1874), L. R. 9 C. P. 605.

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 97 (2).

SECT. 2. In Municipal Elections.

at which notices may be left (*b*). If no such writing be left at the master's office within a week after the service of the petition, notices may be given and proceedings may be served by sticking them up at the master's offices (*c*).

Names and addresses to be kept by master.

Such names and addresses given by the petitioner and respondent are entered by the master in a book kept at his office, which is open to inspection by any person during office hours (*d*).

Notice by agent.

An agent employed for the petitioner or for the respondent must leave forthwith at the master's office written notice of his appointment (*e*).

Service of notice of presentation.

971. Within five days after the presentation of the petition exclusive of the day of presentation, the petitioner must serve on the respondent a notice of the presentation of the petition and of the nature of the proposed security, and a copy of the petition (*f*).

The provisions as to the mode of service and as to the case of evasion of service are similar to those prevailing with regard to such matters when relating to parliamentary election petitions (*g*).

Immediately after notice of the presentation of a petition and of the nature of the proposed security has been served, the petitioner or his agent must file with the master an affidavit of the time at and manner in which service was made (*h*).

Security by recognisance.

972. Where the security is given by recognisance, similar provisions apply thereto, and to objections, if any, thereto, and to the removal of such objections and the cost of the hearing thereof, as in the case of parliamentary election petitions (*i*). The time for giving notice of objection is five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service, or, in the case of further security, five days after service of notice of the nature thereof, exclusive of the day of service (*k*).

If no security either by way of deposit or of recognisance is given, or, if given by way of recognisance, an objection taken thereto

(*b*) Municipal Election Petition Rules, r. 10.
(*c*) *Ibid.*
(*d*) *Ibid.*, r. 11.
(*e*) *Ibid.*, r. 14.
(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 89 (3); Municipal Election Petition Rules, r. 13.
(*g*) Municipal Election Petition Rules, rr. 14, 15. See p. 418, *ante*.
(*h*) *Ibid.*, r. 36.
(*i*) See p. 419, *ante*; Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 89 (4), (5), (6), (7), 90; Municipal Election Petition Rules, rr. 24—33. The following is a form of affidavit of sufficiency of a surety contained in r. 33:—

In the High Court of Justice,
Municipal Corporations Act, 1882.

I, A. B., of [*as in recognisance*] make oath and say that I am seised or possessed of real [*or* personal] estate above what will satisfy my debts, of the clear value of £

Sworn, &c.

(*k*) Municipal Election Petition Rules, r. 27.

is allowed and is not removed as prescribed (*l*), no further proceedings may be had on the petition (*m*).

Petition at issue.

973. On the expiration of the time limited for making objection, or, after objection made, on the objection being disallowed or removed, whichever last happens, the petition becomes at issue (*n*).

Last day for presentation falling on holiday.

974. When the last day for presenting a petition or the filing of any other matter required to be filed within a given time falls on a holiday, the petition or other matter is deemed to be duly filed if it be put into the letter-box at the master's office at any time during such day. But an affidavit, stating with reasonable precision the time when such delivery was made, must be filed on the first day after the expiration of the holidays (*o*).

Municipal Election List.

975. The master is to make out a list, called the Municipal Election List, of all the petitions at issue, placing them in the order of their presentation. He is to insert in the list the names of the agents of the petitioners and respondents, and the addresses to which notices may be sent, if any. The list is to be put upon a notice board headed "Municipal Election List," and is to be open to inspection during office hours (*p*).

Copy to be sent to judges on rota.

As soon as may be after the list is made out, the master is to send a copy of it to each of the judges on the rota for the trial of parliamentary election petitions (*q*).

County council elections.

976. In the application of the Municipal Corporations Act, 1882, as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, to county council elections, the word "county" is to be substituted for "borough," and the words "county elector" for "burgess" (*r*). The word "chairman" is to be substituted for the word "mayor" (*s*), the words "county aldermen" for "aldermen," the words "county councillors" for "councillors" (*t*), and the words "clerk of the peace" for "town clerk" (*a*).

Application of Act to electors in City of London.

977. The provisions of Part IV. of the Municipal Corporations Act, 1882, and of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, apply to a municipal election in the City of London (*b*). For this purpose the expression "borough" means the City, and "municipal election" means an election to the office of mayor, alderman, common councilman, or sheriff,

(*l*) See p. 498, *ante*.
(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 89 (7).
(*n*) *Ibid.*, s. 90.
(*o*) Municipal Election Petition Rules, r. 38.
(*p*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 30), s. 91 (1); Municipal Election Petition Rules, r. 39.
(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 30), s. 92 (4).
(*r*) County Electors Act, 1888 (51 Vict. c. 10), s. 2 (2).
(*s*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 2 (5) (a).
(*t*) *Ibid.*, s. 2 (2) (c).
(*a*) County Electors Act, 1888 (51 Vict. c. 10), s. 7 (2).
(*b*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 35; City of London Ballot Act, 1887 (50 & 51 Vict. c. xiii.), s. 9.

SECT. 2. In Municipal Elections.

and it includes the election of any officer elected by the mayor, aldermen, and liverymen in common-hall (*c*), and the expression "corporate office" includes each of such offices (*d*); and the elections of chamberlains, bridgemasters, auditors of chamberlains' and bridgemasters' accounts, and the elections of all officers to be chosen in and for the City by the liverymen, and all elections of aldermen and common councilmen chosen at the wardmotes of the City, are subject to these provisions (*e*). All these elections are in the first instance conducted by a show of hands, but if a poll be demanded by any of the candidates or by any two or more of the electors, it is to be taken (*f*).

Metropolitan borough councils.

978. The provisions of Part IV. of the Municipal Corporations Act, 1882, and of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, with the modifications hereinafter mentioned, apply to the offices of mayor and aldermen (*g*) and of councillors (*h*) of metropolitan borough councils. They apply equally whether the election has been held to supply a casual or an ordinary vacancy (*i*).

If the petition be one complaining of a corrupt practice, the time for presentation is the same as in the case of a petition

(*c*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 35 (1).

(*d*) *Ibid.*

(*e*) City of London Ballot Act, 1887 (50 & 51 Vict. c. xiii.), ss. 2, 9.

(*f*) As to the mode of election to the office of lord mayor, see *R.* v. *Parkyns* (1820), 3 B. & Ald. 668, 669, 670. It seems that the final election to the mayoralty takes place by the lord mayor in office at the time and aldermen electing by ballot one of the two aldermen nominated by the liverymen. In the case of *Scales* v. *Key* (1840), 11 Ad. & El. 819, the right of the court of mayor and aldermen of the City of London to adjudge concerning the election and return of every person elected at any wardmote was, on evidence before a judge and jury, found to be established. No statute has been passed expressly abrogating the right, but the Municipal Corporations (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 35, certainly seems to transfer such jurisdiction to the High Court. Apparently, however, as yet no City election has been questioned by means of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), Part IV. In 1906, a petition against the election of a common councilman for the Portsoken ward in the City was brought before the court of mayor and aldermen, the Recorder of London sitting as assessor; but the point as to the jurisdiction having been transferred to the High Court seems not to have been definitely raised. The fact that, with respect to these elections, the jurisdiction to order inspection of ballot papers is vested in the City of London Court "or in any tribunal in which a municipal election is questioned," with appeal to the High Court, similarly as in the cases of other municipal election petitions (see City of London Ballot Act, 1887 (50 & 51 Vict. c. xiii.), schedule, s. 4 (a), p. 511, *post*), tends, it is submitted, to show that the general jurisdiction as to trying election petitions has been transferred.

(*g*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75; London Government Act, 1899 (62 & 63 Vict. c. 14), s. 2 (4).

(*h*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 2 (5); Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 23 (5), 31 (1), 48 (2), (3); Metropolitan Borough Councillors Election Order, 1903, rr. 23 (2), 24, Statutory Rules and Orders Revised, Vol. VIII., London County, pp. 43 *et seq.*).

(*i*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 40; Metropolitan Borough Councillors Election Order, 1903, Sched. V., r. 40 (1). The election of a sheriff of a city is not questionable by petition, but by *quo warranto* (*Pope* v. *Bruton* (1900), 17 T. L. R. 182).

relating to a municipal election (*k*), but if it alleges an illegal practice, either alone or in conjunction with a corrupt practice, the presentation may be made within six weeks after the day of the election (*l*).

Security on presentation.

Moreover, the security to be found on the presentation of a petition relating to any such office in connection with a metropolitan borough council is to be found in the same manner as that in which a security relating to a petition in connection with a municipal election (*m*) is found, and the amount thereof is to be £50, unless, in any case, the High Court, or a judge thereof, on summons, orders that it is to be of a less amount, or of a larger amount not exceeding £300 (*n*).

Urban and rural district councils.

979. The provisions with regard to the questioning of the election of a councillor of an urban or rural district council, as to the security to be given and the time for the presentation of the petition, are similar to those prevailing in the case of a petition relating to an election to such office on a metropolitan borough council (*o*). The provisions apply equally whether the election has been held to fill an ordinary or a casual vacancy (*p*).

Parish councils.

980. The provisions with regard to the questioning of an election (*q*) of councillors of a parish council (*r*), or the election of an annual chairman of a parish meeting, when such election has been held upon a poll demanded (*s*), and the provisions as to the security to be given upon the presentation of the petition and as to the time for such presentation, are similar to those prevailing in the case of a petition relating to an election of an urban or rural district councillor (*t*).

(*k*) See p. 493, *ante*; Metropolitan Borough Councillors Election Order, 1903, r. 23 (2).

(*l*) *Ibid.*, r. 24 (5).

(*m*) See p. 498, *ante*.

(*n*) Metropolitan Borough Councillors Election Order, 1903, r. 23 (2) (c).

(*o*) Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 23 (5), 24 (4), 48 (2), (3); Urban District Councillors Election Order, 1898, rr. 26, 27, Statutory Rules and Orders Revised, Vol. IV., District Council, England, pp. 8 *et seq.*; Rural District Councillors Election Order, 1898, rr. 25, 26 Statutory Rules and Orders Revised, Vol. IV., District Council, England, pp. 46 *et seq.*

(*p*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (4); Urban District Councillors Election Order, 1898, Sched. V., r. 40 (1); Rural District Councillors Election Order, 1898, Sched. V., r. 40 (1). As to the election of chairmen of urban and rural district councils, boards of guardians, and parish councils, see pp. 375, 382, 389, 393, *ante*. Such election not being by ballot, the provisions of Part IV. of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), appear not to have been made applicable to it.

(*q*) The town council may order a new election under the Local Government (Elections) Act, 1896 (59 Vict. c. 1), s. 1 (1).

(*r*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 3 (6). As to the question whether a petition lies where no poll has been demanded, see p. 387, *ante*. When it is too late for a petition the county council can still intervene (*R.* v. *Miles, Ex parte Cole* (1895), 64 L. J. (Q. B.) 420). In that case a poll had been demanded.

(*s*) *Ibid.*, s. 48 (8); Sched. I., Part I., r. 7.

(*t*) *Ibid.*, s. 48 (2), (3); Parish Councillors Election Order, 1901, rr. 36, 37; Parish Councillors (Small Parishes) First Election Order, 1898, rr. 34, 35, Statutory Rules and Orders Revised, Vol. IX., Parish Council and Parish Meeting, England, pp. 46 *et seq.*

SECT. 2. **In Municipal Elections.**

Application of Act.

981. In the application of Part IV. of the Municipal Corporations Act, 1882, as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, to the election of urban district councillors (*a*), rural district councillors (*b*), or parish councillors, references to "a municipal election" or to "an election to a corporate office" are deemed to be references to the election of an urban district councillor, rural district councillor, or parish councillor respectively, and the expression "returning officer" is to be substituted for the expression "town clerk" (*c*).

In the case of urban district councils the expression "urban district" or "ward of an urban district" is to be substituted for "borough or ward," and the words "rate applicable to the general expenses of the urban district council" are to be substituted for the words "borough fund or rate" (*d*).

In the case of rural district councils the word "voter" means "a parochial elector, or a person who votes or claims to vote at an election of rural district councillors." The words "parish or united parishes" and "poor law union" are to be substituted for "borough," and the words "poor rate of the parish" or "poor rates of the united parishes" are to be substituted for "borough fund or borough rate" (*e*).

In the case of parish councils the term "returning officer" includes the chairman of a parish meeting held for the election of parish councillors, and "voter" means "a parochial elector or a person who votes or claims to vote at an election of parish councillors." The words "parish" and "poor law union" are to be substituted for "borough," and the expression "poor rate of the parish" for "borough fund or borough rate" (*f*). "Parish or ward of a parish" is to be substituted for "borough or ward" (*g*).

Parish meeting.

982. At any parish meeting where a poll has been taken upon any matter (*h*) a petition questioning the same may be brought in like manner as if it were a poll for the election of parish councillors (*i*), and similar provisions prevail as to such a petition as to one in the case of an election of parish councillors (*k*).

In the application of these provisions to a poll consequent on a

(*a*) Urban District Councillors Election Order, 1898, r. 26 (2).
(*b*) Rural District Councillors Election Order, 1898, r. 25 (2) (b).
(*c*) Parish Councillors Election Order, 1901, r. 36 (2) (b), Statutory Rules and Orders Revised, Vol. IX., Parish Council and Parish Meeting, England, pp. 77 *et seq.*
(*d*) Urban District Councillors Election Order, 1898, r. 26 (2) (b).
(*e*) Rural District Councillors Election Order, 1898, r. 25 (2) (b).
(*f*) Parish Councillors Election Order, 1901, r. 36 (2) (b); Parish Councillors (Small Parishes) First Election Order, 1898, r. 34 (2) (b).
(*g*) Parish Councillors Election Order, 1901, r. 37 (2); Parish Councillors (Small Parishes) First Election Order, 1898, r. 35 (2), (3).
(*h*) As to the cases in which a poll may be demanded and is to be taken at a parish meeting, see Local Government Act, 1894 (56 & 57 Vict. c. 73), Sched. I., Part I., r. 7.
(*i*) *Ibid.*, s. 48 (8).
(*k*) *Ibid.*; Parish Meetings (Polls) Order, 1894, Statutory Rules and Orders Revised, Vol. IX., Parish Council and Parish Meeting, England, pp. 1 *et seq.*, rr. 15, 16, where there is no parish council; Parish Meetings (Polls) Order, 1895,

SECT. 2. In Municipal Elections.

parish meeting both in cases where there is (*l*) and where there is not (*m*) a parish council references to the poll are deemed to be substituted for references to a municipal election or to an election to a corporate office. The terms "parish," "returning officer at poll of parish," and "poor rate" are deemed to be substituted for "borough or ward of a borough," "town clerk," and "borough fund or rate respectively." The expression "corporate office" in the Act means "an office to which the parish meeting may appoint," and "a municipal election" means "a poll consequent on a parish meeting," and the expressions "municipal election court," "municipal election list," and "municipal election petition" are construed accordingly (*n*), and "voter" means a parochial elector or a person who votes or claims to vote at a poll consequent on a parish meeting(*o*).

Guardians of poor law union.

983. The foregoing provisions as to the questioning of an election and as to the security to be given on the presentation of the petition and as to the time for the presentation thereof apply also to the election of a guardian for a poor law union, whether the vacancy to fill which the election has been held has been an ordinary or a casual one (*p*).

In the application of these provisions to an election of a guardian for a poor law union references to "a municipal election" or to "an election to a corporate office" are deemed to be references to an election of a guardian for a poor law union, the expression "returning officer" is to be substituted for the expression "town clerk," the word "voter" means "a parochial elector or a person who votes or claims to vote at an election of guardians," the words "parish or united parishes" and "poor law union" are to be substituted for "borough," and the expressions "poor rate of the parish" or "poor rates of the united parishes" are to be substituted for "borough fund or borough rate" (*q*).

Local Government Act, 1894.

984. By Rules of the Supreme Court under the Local Government Act, 1894, the Municipal Election General Rules (except as to the amount of the security) are made applicable to petitions in respect of elections under the Local Government Act, 1894, and the rules made under that Act (*r*). For the purposes of such elections

rr. 16, 17, Statutory Rules and Orders Revised, Vol. IX., Parish Council and Parish Meeting, England, pp. 23 *et seq.*, where there is a parish council.

(*l*) Parish Meetings (Polls) Order, 1895, r. 16 (2) (b).

(*m*) Parish Meetings (Polls) Order, 1894, r. 15 (2) (b).

(*n*) Parish Meetings (Polls) Order, 1895, r. 17 (2), (3); Parish Meetings (Polls) Order, 1894, r. 16 (2), (3).

(*o*) *Ibid.*

(*p*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 36 (1), and Sched. I.; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 20 (5), s. 48 (2), (3), (4); Guardians (London) Election Order, 1898, rr. 24, 25, and Sched. V., r. 40 (1), for Boards of Guardians in London; Guardians (Outside London) Election Order, 1898, rr. 27, 28, and Sched. V., r. 40 (1), for Boards of Guardians outside London.

(*q*) Guardians (Outside London) Election Order, 1898, r. 27 (2) (b); Guardians (London) Election Order, 1898, r. 24 (2) (b).

(*r*) See R. S. C., January 14th, 1895, Statutory Rules and Orders Revised, Vol. XII., Supreme Court, England, p. 669.

SECT. 2. In Municipal Elections.

in the forms prescribed by the Municipal Election General Rules, "The Local Government Act, 1894" (*s*), is to be substituted for the Municipal Corporations Act, 1882 (*t*).

Mandamus not to be granted.

985. Where, in respect of any of the aforesaid elections, a remedy is provided by way of an election petition a mandamus will not lie (*u*).

Computation of time.

986. Where, under the Municipal Corporations Act, 1882, any limited time from or after any date or event is appointed or allowed for the doing of any act, or the taking of any proceeding, such time is to be computed as exclusive of the day of that date or of the happening of that event and as commencing at the beginning of the next following day. Such act is to be done or such proceeding is to be taken, at the latest, on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act is to be considered as done, or any proceeding is to be considered as taken in due time, if such act is done, or such proceeding is taken on the next day afterwards, not being one of the days hereinbefore specified (*x*).

Where any such act is directed or allowed to be done, or any such proceeding is directed or allowed to be taken, on a certain day, if such day happens to be one of those above specified, the act is to be considered as done, or the proceeding is to be considered as taken in due time, if such act is done, or such proceeding is taken on the next day afterwards not being one of the days above specified (*a*).

Where any such act is directed or allowed to be done, or any such proceeding is directed or allowed to be taken within any time not exceeding seven days, the days above specified are not to be reckoned in the computation of such time (*b*).

These provisions as to the computation of time are applicable to county council elections (*c*), and to the election of mayors and aldermen of metropolitan borough councils (*d*), but they have not been made applicable to the election of metropolitan borough councillors or to elections in the City of London, or to elections to urban or rural district councils, or to parish councils, or to proceedings consequent upon a poll held at a parish meeting.

(*s*) 56 & 57 Vict. c. 73.
(*t*) 45 & 46 Vict. c. 50.
(*u*) *R.* v. *Miles, Ex parte Cole* (1895), 72 L. T. 502. As to the powers of the county council in certain cases with regard to the election of a councillor or of a guardian, and with regard to the holding of a first parish meeting and to certain other matters, see Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 48 (5), 80, and *R.* v. *Miles, Ex parte Cole, supra.*
(*x*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), Part XIII., s. 230 (1).
(*a*) *Ibid.*, s. 230 (2).
(*b*) *Ibid.*, s. 230 (3).
(*c*) *Ibid.*; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75.
(*d*) *Ibid.*; London Government Act, 1899 (62 & 63 Vict. c. 14), s. 2 (4).

SUB-SECT. 3.—*Interlocutory Proceedings.* SECT. 2. In Municipal Elections.

987. All interlocutory questions and matters, except as to the sufficiency of the security, are to be heard and disposed of before a judge, who is to have the same control over the proceedings as a judge has in the ordinary proceedings of the High Court. They are to be heard and disposed of by any judge of the High Court (*e*). How disposed of.

(*e*) Municipal Election Petition Rules, r. 57. Opinion differs on the question as to whether this rule includes applications under the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), or whether such applications must be made to a judge on the rota. But it is submitted that s. 30 of that Act does not prescribe, with regard to municipal elections, that the jurisdiction derived from the Act is to be exercised by a judge on the rota as the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), prescribes with regard to parliamentary elections and the jurisdiction derived from that Act, with the exception of jurisdiction relating to indictments or other criminal proceedings. It is submitted that the operation of s. 30 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), is limited to matters specified in the opening part of the section, namely, criminal proceedings in connection with a corrupt or illegal practice, the removal of incapacity, entailed by the report or conviction of such practice, on proof that the evidence of it was perjured, the duties of the Director of Public Prosecutions in relation to such offence, and all other proceedings in relation to such offence. These matters refer to an offence which has been found to have been committed in respect of a municipal election, and the section provides that the proceedings specified "and all other proceedings in relation thereto" (*i.e.*, to such offence) "shall be the same as if such offence had been committed in reference to a parliamentary election." Thus, it does not appear, necessarily, to apply to the mere allegation of an offence committed, and it says all other proceedings relating to such offence, not all other proceedings relating to a petition alleging such offence. The words do not appear to include all the jurisdiction given by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), not, for instance, it is submitted, that of allowing the amendment of a petition by an allegation of an illegal practice.

The section goes on to say that ss. 45, 46, 50—57, 59, and 60 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), all of which, with the partial exception of s. 56 and of s. 59, are in the nature of provisions for criminal procedure, shall apply accordingly as if they were re-enacted in the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), with the necessary modifications and with certain additions. The words declaring that these provisions "shall apply accordingly" mean, it is submitted, according as they relate to the aforesaid matters specified in the opening part of the section.

It is established that, by s. 56 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), the exercise of any jurisdiction derived from that Act by a judge who is not on the rota is precluded (see *Shaw* v. *Reckitt*, [1893] 1 Q. B. 779). But in considering whether a like result is produced by the above-mentioned application of s. 56 to municipal elections, contained in s. 30 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), attention is drawn to the following points of difference between the provisions for petitions relating to parliamentary elections and those relating to municipal elections. By r. 44 of the general rules made by the judges on the rota relating to the former, there was express provision that, where practicable, interlocutory applications should be heard by a judge on the rota, whereas by r. 57 of the general rules made by the judges on the rota, relating to municipal elections, it was provided that they should be heard by any judge of the High Court. S. 56 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), alludes to the making of rules for the purposes of that Act as well as of the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), but, after the aforesaid application of s. 56 contained in s. 30 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 30 (b), alludes to the making of rules for the purposes of Part IV. of the Municipal Corporations

SECT. 2. In Municipal Elections.

Notice.

The notice to be given is the same as in parliamentary election petitions, and the provisions as to appealing from the decision of the judge on an interlocutory question or matter are also the same as in parliamentary election petitions (*f*). At least two clear days before the making of any interlocutory application or motion to the court, notice of it should be given at the Election Petitions Office and to the other side (*g*).

Jurisdiction of High Court

988. The High Court has, subject to the provisions of the Municipal Corporations Act, 1882, as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, the same powers, jurisdiction, and authority with respect to a municipal election petition, and the proceedings thereon, as if the petition were an ordinary action within its jurisdiction (*h*).

Particulars.

989. Such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial, may be ordered by the High Court or a judge thereof in the same way as in ordinary proceedings in the High Court, and upon such terms as to costs and otherwise as may be ordered (*i*).

The provisions as to the nature of the particulars ordered, the time within which they are ordered, and the consequences if they be not delivered in accordance with the order, are similar to those prevailing in parliamentary election petitions (*k*).

Particulars of votes objected to etc.

990. Where a petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, either

Act, 1882 (45 & 46 Vict. c. 50), and not for any of the purposes of the later Act. The only clause in the later Act which refers expressly to the judges on the rota is s. 36 (2), which merely provides for the appointment of barristers as commissioners by those judges, a provision previously made by s. 92 (4) of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), repealed by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), Sched. II.

If the view here contended is incorrect, the practice which is followed of allowing applications for relief under s. 20 and applications under s. 21 (6) of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (45 & 46 Vict. c. 50), to be made to the Divisional Court which happens to be sitting (see *Ex parte Forster* (1903), 89 L. T. 18; *Re Election of County Councillors* (1889), 5 T. L. R. 203, 206, 207; *Ex parte Wilks* (1885), 16 Q. B. D. 114) is irregular. It seems that the same course used to be followed in the case of the corresponding applications with regard to parliamentary elections, but this would seem to be contrary to s. 56 of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), and since 1906, in accordance with the opinion of the judges, the practice of making these applications to a judge on the rota in court has been adopted. With regard to applications under s. 21 (6) of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), it may be observed, further, that the county court has concurrent jurisdiction. It is submitted that the present practice of allowing these applications to be made to the Divisional Court is not contrary to s. 30 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), and, accordingly, that interlocutory applications for the exercise of jurisdiction conferred by that Act may be made to a judge not on the rota.

(*f*) See p. 423, *ante*.
(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 100 (4).
(*h*) See p. 423, *ante*.
(*i*) Municipal Election Petition Rules, r. 6.
(*k*) See pp. 423 *et seq.*, *ante*.

party must, six days before that appointed for the trial, deliver to the master, and, also, at the address, if any, given by the other side, a list of the votes which such party intends to object to and of the heads of the objection to each such vote. Inspection and office copies of such lists are allowed by the master to all parties concerned. No evidence may be given against the validity of any vote or under any head of objection not specified in the list, unless by leave of the High Court or a judge thereof upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs as may be ordered (*l*).

Similar particulars are ordered of votes which are sought to be added (*m*).

Where no such particulars have been delivered within the time specified, the court has no power to extend the time nor to allow evidence of the votes objected to, or of the objections thereto, to be given at the trial (*n*).

In respect of such claims there is no jurisdiction to order any particulars except the lists and heads of objection specified (*o*). But where a petition contains allegations upon which it claims to have the election invalidated, and goes on, further, to pray a scrutiny and to claim the office, particulars may be ordered as to the former part of the petition, while as to the latter part the said lists and heads of objection only may be ordered (*p*).

Particulars of recriminatory case.

991. When the petition complains of an undue election and claims the office for an unsuccessful candidate, the respondent may seek to prove that the election of such candidate was undue, and may call evidence to that effect in like manner as if he were petitioning against the election of such candidate (*q*). Such a case is called the recriminatory case. If the respondent proposes to call evidence in support of such a case he must, six days before that appointed for the trial, deliver to the master, and also at the address, if any, given by the petitioner, a list of the objections to the election on which he intends to rely, and the master is to allow inspection and office copies of such lists to all parties concerned (*r*). No evidence may be given by a respondent of any objection not specified in the list except with leave of the High Court or of a judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs as may be ordered (*s*). The aforesaid time, and any time mentioned in any rule of court or judge's order whereby particulars are ordered to be delivered, or any act is directed to be done so many days before the day appointed for trial, is to be reckoned exclusively of the day of delivery or that of doing the act ordered and of the day appointed for trial and,

(*l*) Municipal Election Petition Rules, r. 7. See p. 426, *ante*.
(*m*) See note (*q*), p. 427, *ante*.
(*n*) See note (*r*), p. 427, *ante*.
(*o*) See note (*o*), p. 426, *ante*.
(*p*) *Ibid*.
(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (10).
(*r*) Municipal Election Petition Rules, r. 8.
(*s*) *Ibid*.

SECT. 2. In Municipal Elections.

also, exclusively of Sunday, Christmas Day, and any day set apart for a public fast or a public thanksgiving (*t*).

Dismissal of petition.

992. A respondent may apply to have a petition dismissed. The practice with regard to such application and to the dismissal is the same as in the case of parliamentary election petitions (*u*).

Where an application is made to the High Court for relief under s. 20 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, the court will refuse such relief, if a petition alleging corrupt practices or illegal practices other than that in respect of which the application is made is pending (*w*). But if a petition has not actually been presented, though it has been threatened, the court may, in its discretion, grant the relief asked (*x*); and even though a petition has been presented, if the only allegation in it on which the petition is challenged is the matter in respect of which the application is made, the court may, in its discretion, grant the relief asked (*a*).

Notice of intention not to oppose.

993. If all the respondents have given notice of their intention not to oppose the petition, and no other person has been admitted as a respondent (*b*), the High Court or a judge thereof may either declare the election void or direct the trial to proceed. Notice of such order is to be given forthwith by the master to the town clerk, and if the election be declared void the office is to be deemed to be vacant from the first day, not being a *dies non*, after the date of the order (*c*). In such case the court or judge may make such order as to costs as is just (*d*).

Death of petitioner.

994. A municipal election petition abates by the death of a sole petitioner or of the survivor of several petitioners (*e*). Notice of such abatement is to be given in the borough similarly as in the case of such abatement in a parliamentary election petition. Similar provisions prevail, also, as to the substitution of a petitioner, and as to the application to the High Court or a judge thereof for an order for such substitution (*f*).

Security must be given on behalf of a petitioner so substituted as in the case of a new petition (*g*).

The abatement of a petition is not to affect the liability of the petitioner or of any other person to the payment of costs previously incurred (*h*).

(*t*) Municipal Election Petition Rules, r. 37.
(*u*) See p. 436, *ante*.
(*w*) *Ex parte Wilks* (1885), 16 Q. B. D. 114; *Re Election of County Councillors* (1889), 5 T. L. R. 206, 207.
(*x*) *Re Election of County Councillors*, *ibid.*, 203.
(*a*) *Ex parte Forster* (1903), 89 L. T. 18. In such a case the granting of the relief appears to amount, in effect, to a dismissal of the petition.
(*b*) See p. 496, *ante*.
(*c*) Municipal Election Petition Rules, r. 47.
(*d*) *Ibid.*
(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. c. 50), s. 96 (1)
(*f*) *Ibid.*, s. 96 (3); Municipal Election Petition Rules, r. 63; see p. 435, *ante*.
(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 96 (4).
(*h*) *Ibid.*, s. 96 (2).

SECT. 2. In Municipal Elections.

995. A petition does not abate by the death of the respondent (*i*). Respondent's death.

996. A petitioner may not withdraw an election petition without the leave of the election court or High Court on special application made in the prescribed manner and at the prescribed time and place (*j*). Withdrawal of petition.

The provisions as to the notice to be given of an application for leave to withdraw a petition, and as to the service and publication thereof, with the exception that there is no provision ordering the publication thereof by the petitioner in a newspaper circulating in the borough, are similar to the provisions applying to a parliamentary election petition (*k*).

The application is not to be made until the notice of it has been given in the borough (*l*). If there be more than one petitioner the application may not be made unless all the petitioners consent (*m*).

997. On the hearing of the application for leave to withdraw any person who might have been a petitioner in respect of the election in question may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly (*n*). Any such person, intending to make an application for substitution, should, within five days after the notice is published by the returning officer, give written notice signed by him or on his behalf to the master of his intention (*o*). But the want of such notice is not to defeat such person's application if it be in fact made at the hearing (*p*). Application for substitution as petitioner.

998. The time and place for hearing the application for leave to withdraw are fixed by a judge, and either before the High Court or Time, etc. of application to withdraw.

(*i*) See p. 435, *ante*.

(*j*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 95 (1). The only provisions that have been prescribed as to the actual making of the application and as to the time and place thereof, refer to a hearing of it before the High Court, or a judge of the High Court (see Municipal Election Petition Rules, r. 62, *infra*). Thus, it will be observed, though the Act enables the granting of the leave by either the election court or by the High Court, it does so, in respect of either, with qualifications, and, as regards the application to the former, no means of satisfying the qualifications have been provided. It is submitted, accordingly, that at present the leave can only be obtained on application to the High Court or a judge, at least in cases where it is sought to withdraw a petition before the trial of it has begun. It will be observed, too, that the provisions as to notice and the prescribed lapse of time would seem to render the application, if made beforehand, hardly practicable before a municipal election court. On the other hand, the provisions of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 26 (7), are worthy of observation, more especially as they were enacted subsequently to the Municipal Election Petition Rules, which, as pointed out, fail to prescribe any procedure for the making of the application for leave to withdraw to the election court; see p. 510, *post*.

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict, c. 50), s. 95 (2); Municipal Election Petition Rules, rr. 58—60, p. 431, *ante*. The word "county" is, of course, to be omitted and "town clerk" is to be read for returning officer. For forms of notices, see rr. 58, 60.

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 95 (2).

(*m*) *Ibid.*, s. 95 (8).

(*n*) *Ibid.*, s. 95 (3).

(*o*) Municipal Election Petition Rules, r. 61.

(*p*) *Ibid.*

SECT. 2. In Municipal Elections.

before a judge as he may consider advisable, but the hearing is not to be less than a week after the notice of the intention to apply has been given to the master (*q*). Notice of the time and place appointed for the hearing is to be given to such person or persons, if any, as may have given notice to the master of an intention to apply to be substituted for the petitioner, and otherwise in such manner and at such time as the court or judge may direct (*r*).

Affidavits required on application.

999. The provisions as to the production of affidavits, as to what persons are to make them (with the exception that there is no provision that a person not a solicitor, who is lawfully acting as agent in the case of an election petition, is to be deemed to be a solicitor for the purpose of making such affidavit (*s*)), as to what the affidavits are to set out, as to the service of copies thereof, and as to the powers given to the Director of Public Prosecutions on the hearing of an application for leave to withdraw a petition, are similar to those prevailing with regard to such an application in the case of a parliamentary election petition (*t*).

The provisions as to the powers of the court with regard to the security already deposited (*a*), and as to the giving of security by the substituted petitioner (*b*), are similar to those prevailing in the like cases with regard to a parliamentary election petition (*c*).

Subject to the provisions stated, a substituted petitioner is, as nearly as possible, to stand in the same position and to be subject to the same liabilities as the original petitioner (*d*).

If a petition is withdrawn the petitioner is liable to pay the costs of the respondent (*e*).

Report to High Court on withdrawal.

1000. In every case of the withdrawal of an election petition by leave of the election court, the election court is to report in writing to the High Court whether, in the opinion of the election court, the withdrawal of the petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration; and if, in the opinion of the election

(*q*) Municipal Election Petition Rules, r. 62.

(*r*) *Ibid.*

(*s*) See p. 433, *ante;* Municipal Election Petition Rules, rr. 9, 10, by which provision is made for the appointment of a solicitor only as such agent (see p. 496, *ante*).

(*t*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 26 (1)—(4). See pp. 432—434, *ante.*

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 95 (4); Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 47 Vict. c. 70), s. 26 (6).

(*b*) Municipal Corporations Act, 1882 (45 & 45 Vict. c. 50), s. 95 (5).

(*c*) See p. 434, *ante.*

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 95 (6).

(*e*) *Ibid.*, s. 95 (7). In the *Stamford Case, Cade and Burrow* v. *Marsh* (1906), *Times*, 20th January, where a letter had been sent to the respondent saying that, if he did not give up his seat, he would be liable to criminal proceedings, and subsequently a petition on unfounded allegations was brought, the court, in allowing the petitioner's application for leave to withdraw the petition, awarded the respondent costs as between solicitor and client.

court, such is the case it is to state the circumstances attending the withdrawal (*f*).

Countermanding trial.

1001. After receiving notice of the petitioner's intention to apply for leave to withdraw, or of the respondent's intention not to oppose, or of the abatement of the petition by the death of the petitioner, or of the death of the respondent, or of his resignation, or of his ceasing to hold the office to which the petition relates, if the notice be received after notice of trial has been given and before the trial has commenced, the master is forthwith to countermand the notice of trial. The countermand is to be given in the same manner as nearly as possible as the notice of trial (*g*).

Notices to produce and admit.

1002. Notices to produce and admit are in the same form as in the proceedings upon a parliamentary election petition (*h*), and the practice with regard thereto and with regard to service thereof is the same as in such proceedings (*i*).

There is no power to order inspection or discovery of documents, nor to make an order for the administration of interrogatories (*k*).

Inspection of ballot papers etc.

1003. No one is allowed to have inspection of any rejected ballot papers, or of any counted ballot papers, or to open the sealed packet of counterfoils after it has been once sealed up (*l*), without an order of the county court having jurisdiction in the borough, county, urban district, or poor law union respectively, or in any part thereof, or of any tribunal in which a municipal election is questioned (*m*).

Application for inspection order.

If the application for such order be made to the county court an appeal lies in like manner as in other cases from that court (*n*).

In the case of municipal elections within the City of London, such order is to be obtained from the City of London Court, whence the like right of appeal lies, or from any tribunal in which a municipal election is questioned (*o*).

Examination of sick witness.

1004. A commission for the examination of a witness who is ill may be ordered by the High Court (*p*) or by the election court (*q*).

(*f*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 26 (7).

(*g*) Municipal Election Petition Rules, r. 46. For form of notice of trial, see r. 42.

(*h*) See pp. 429, 430, *ante*.

(*i*) *Ibid.*

(*k*) See p. 430, *ante*.

(*l*) As to the custody of these and other documents after the election has been held, and as to the inspection of all other documents in the custody of the town clerk, see p. 350, *ante*.

(*m*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., rr. 40, 41, 64 (b) (a); Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (3). See title COUNTY COURTS, Vol. VIII., p. 635.

(*n*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., r. 64 (b) (a).

(*o*) *Ibid.*, rr. 43, 41; City of London Ballot Act, 1887 (50 & 51 Vict. c. xiii.), Sched., s. 4 (a).

(*p*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 100 (4).

(*q*) *Ibid.*, s. 92 (6); Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 29; *Staleybridge Election Petition* (1869), 19 L. T. 703; *Wells* v. *Wren* (1880), 5 C. P. D. 546, *per* Lord COLERIDGE, C.J., at p. 550; *R.* v. *Maidenhead Corporation* (1882), 9 Q. B. D. 496, 500, C. A.

SECT. 2. **In Municipal Elections.**

The procedure with regard to such examination on commission is the same as in the like case with relation to the trial of a parliamentary election petition (*r*).

Recount.

1005. The provisions as to the application for and the granting of a recount in a municipal election petition are similar to those relating to the granting of a recount in a parliamentary election petition (*s*).

Filing of copies of orders and particulars.

1006. A copy of every order, other than an order giving further time for delivering particulars or for costs only, or if the master so directs the order itself, or a duplicate of it, is forthwith to be filed with the master by the party obtaining it. Similarly, a copy of every particular delivered must be filed by the party delivering it. Such copies or such order or duplicate are to be produced by the registrar at the trial, stamped with the official seal (*t*).

Statement of case for High Court.

1007. If, upon application being made for that purpose, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct it to be so stated, and the decision of the case by the High Court shall be final, unless the High Court gives special leave to appeal to the Court of Appeal (*a*). The case is stated in the Divisional Court (*b*). If, in pursuance of leave given by the Divisional Court, an appeal is brought to the Court of Appeal, the decision of the Court of Appeal is to be final and conclusive (*c*). The application should be made by motion in the Divisional Court (*d*) or by a summons before a judge (*e*).

SUB-SECT. 4.—*The Hearing.*

Order of trial.

1008. Petitions are, as far as conveniently may be, to be tried in the order in which they stand in the list (*f*).

Several respondents.

1009. Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purposes of Part IV. of the Municipal Corporations Act, 1882, the petition is deemed to be a separate petition against each (*g*).

Two or more petitions relating to same election.

1010. Where there are two or more petitions relating to the same election or to elections held at the same time for different wards of

(*r*) See p. 430, *ante*.
(*s*) See p. 427, *ante*.
(*t*) Municipal Election Petition Rules, r. 35.
(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (7); *ibid.*, s. 242 (3), by virtue of which the Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 14, is made applicable; *Line* v. *Warren* (1885), 14 Q. B. D. 548, C. A.; *Beresford-Hope* v. *Sandhurst* (*Lady*) (1889), 23 Q. B. D. 79, C. A.; and see p. 436, *ante*.
(*b*) *Ibid.*
(*c*) Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 14.
(*d*) See p. 436, *ante*.
(*e*) Municipal Election Petition Rules, r. 48. The practice is to apply by summons before a judge in chambers.
(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 91 (2).
(*g*) *Ibid.*, s. 91 (3).

the same borough, they are bracketed together in the list as one petition, but they are to take their place in the list where the last of them would have stood if it had been the only petition relating to that election, unless the High Court otherwise directs (*h*).

Trial to be in open court.

1011. An election petition is to be tried in open court (*i*). The time of the trial is to be appointed by the election judges on the rota or by any one of them, by whom it is to be signified to the master (*k*).

Time and place of trial.

Written notice of the appointed time and of the place of trial are given by the master by sticking it up in his office, sending by post a copy to the address given by the petitioner, and one to the address, if any, given by the respondent, and a copy to the town clerk of the borough, fifteen days before the day appointed for the trial (*l*). The town clerk is to publish the notice in the borough forthwith (*m*).

Notice.

The sticking up of the notice of trial at the office of the master constitutes of itself due notice, and it will not be vitiated by any miscarriage of such copies or any of them (*n*).

Postponement of trial.

1012. A judge may from time to time, by order made upon the application of a party to the petition, or by notice, in such form as he may direct, sent to the town clerk, postpone the beginning of the trial to such day as he may name. Such notice when received is forthwith to be made public by the town clerk (*o*).

1013. In the event of the commissioner to whom the trial of a petition is assigned not having arrived at the time appointed for the trial or to which the trial is postponed, the commencement of the trial will *ipso facto* stand adjourned to the ensuing day, and so from day to day (*p*).

Adjournment.

No formal adjournment of the court for the trial of a municipal election petition is necessary after the trial has begun, but the trial is to be deemed to be adjourned and may be continued from day to day until the inquiry is concluded (*q*).

Summoning and examination of witnesses.

1014. The court has the same power of requiring the attendance of any person appearing to it to have been concerned in the election and of examining any such person or any person present in court, though he is not called and examined by any party to the petition, as a court has upon the trial of a parliamentary election petition (*r*).

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 91 (4). See note (*f*), p. 437, *ante*.

(*i*) *Ibid.*, s. 93 (1).

(*k*) *Ibid.*; Municipal Election Petition Rules, r. 40.

(*l*) Municipal Election Petition Rules, r. 40. As to the master, see p. 493, *ante*.

(*m*) *Ibid.* For form of notice, see r. 42.

(*n*) Municipal Election Petition Rules, r. 41.

(*o*) *Ibid.*, r. 43. As to the power of the election court to adjourn the trial from time to time and from place to place within the borough or place, see p. 439, *ante*.

(*p*) *Ibid.*, r. 44.

(*q*) Municipal Election Petition Rules, r. 45.

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 94 (2), (3). See

SECT. 2. In Municipal Elections.

Similarly, a witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and the respondent or either of them (*s*).

Contempt of court.

Any person refusing to obey such order by the court for his attendance is thereby guilty of contempt of court and may be committed in like manner as such a person may, in the like case, be committed by a court for the trial of a parliamentary election petition (*a*).

Swearing witnesses and certificates of indemnity.

1015. The provisions as to the summoning and swearing of witnesses, as to their liability for perjury, as to the obligation upon them to answer questions, as to the granting to them of certificates of indemnity, and as to the effects thereof, are similar to those prevailing in the case of a parliamentary election petition (*b*).

The giving or refusal to give a certificate of indemnity to a witness by the election court is to be final and conclusive (*c*).

Attendance of shorthand writer.

1016. The master is to send a notice of the trial to the shorthand writer to the House of Commons, who is by himself or his deputy to attend the trial, and the expenses of the attendance of the shorthand writer are to be treated as part of the expenses in receiving the court. He is to be sworn by the election court faithfully and truly to take down the evidence. He is to take it down at length, and a transcript of the notes of the evidence taken by him is, if the election court so directs, to accompany the court's certificate (*d*).

Attendance of Director of Public Prosecutions.

1017. The provisions for the attendance at the trial of municipal election petitions of the Director of Public Prosecutions, the practice and procedure regulating such attendance, and his duties and rights in connection therewith and consequent thereon, are similar to those prevailing with regard to the trial of a parliamentary election petition (*e*), but with regard to persons who appear to him to have been guilty of a corrupt or illegal practice, and who have not received certificates of indemnity, he appears in the case of a municipal election petition, if he receives no direction from the election court, to have a discretion, having regard to the interests of justice, as to whether he shall prosecute such persons

pp. 440, 441, *ante*. For form of order to compel the attendance of a person as a witness, see Municipal Election Petition Rules, r. 54.

(*s*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 94 (4).

(*a*) *Ibid.*, s. 94 (2); Municipal Election Petition Rules, rr. 55, 56. See p. 440, *ante*. For form of warrant of committal, see r. 55.

(*b*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 59; Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 94 (1)—(5); Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 30. See pp. 440, 450, 451, *ante*. In applying the law set out with regard to parliamentary election petitions to municipal election petitions, the necessary modifications must always be understood.

(*c*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 30 (c).

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 99 (4); Municipal Election Petition Rules, r. 52.

(*e*) See pp. 442, 443, *ante*; Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 28.

SECT. 2. In Municipal Elections.

or not (*f*). He has the same power of appearing by his assistant or representative as in the case of a parliamentary election petition, and the same qualifications are required for his representative (*g*).

Jurisdiction of election court.

1018. An election court has, for the purposes of a municipal election petition, the same powers and privileges as those which are had by an election court trying a parliamentary election petition, with the exception that any fine or order of committal by a municipal election court may, on motion by the person aggrieved, be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge may think fit (*h*). But this exception does not extend to any fine or order of committal by an election court against any person in respect of any corrupt or illegal practice (*i*).

Formal objection.

1019. No proceedings are to be defeated by any formal objection (*k*).

Trial to be continued *de die in diem* as far as possible.

1020. The trial of every municipal election petition, as far as is practicable consistently with the interests of justice in respect of such trial, is to be continued *de die in diem* on every lawful day until its conclusion (*l*).

Place of trial.

1021. The place of trial of a municipal election petition is to be within the borough (*m*).

A petition relating to the election of an urban district councillor is to be tried within the urban district to which the election relates (*n*).

A petition relating to the election of a rural district councillor for a parish may be tried at any place within the poor law union in which the parish is situate (*o*).

A petition relating to the election of a parish councillor or to a poll consequent on a parish meeting may be tried at any place within the poor law union in which the parish is situate (*p*).

(*f*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 28 (3), the wording of which differs from the corresponding provision in the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 43 (3), in the different position with regard to the context of the words, "if he thinks it expedient in the interests of justice," which are common to both. But generally, as to prosecutions, see p. 525, *post*.

(*g*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 28 (8).

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 92 (6).

(*i*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 28 (7).

(*k*) Municipal Election Petition Rules, r. 69. See *Young* v. *Figgins* (1868), 19 L. T. 499.

(*l*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 27.

(*m*) In the case of a petition relating to a county council election it is to be within the county; see p. 499, *ante*.

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (2); Urban District Councillors Election Order, 1898, r. 26 (2) (b).

(*o*) Rural District Councillors Election Order, 1898, r. 26 (6).

(*p*) Parish Councillors Election Order, 1901, r. 37 (6); Parish Councillors (Small Parishes) First Election Order, 1898, r. 35 (6); Parish Meetings (Polls) Order, 1894 (where there is no parish council), r. 16 (5); Parish Meetings (Polls) Order, 1895 (where there is a parish council), r. 17 (5).

SECT. 2. In Municipal Elections.

The place of trial of a petition relating to the election of a guardian is to be within the poor law union to which the election relates (*q*).

Alteration of place of trial.

1022. With regard to the place of trial of a petition relating to any of the elections mentioned, if the High Court is satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere than in the place stated it may appoint some other convenient place (*r*).

When court-house not within borough.

If the building in which it is proposed to hold the trial is situated on land which does not form part of the borough, although it is within the confines thereof, application should be made to the High Court for an order giving leave for the trial of the petition in such building (*a*).

Procedure.

1023. Subject to the provisions of the Municipal Corporations Act, 1882, and of the rules made under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and, in particular, the principles and rules with regard to agency and evidence, and to a scrutiny and to the declaring any person elected in the place of any other person declared to have been not duly elected, are to be observed as far as possible in the case of a municipal election petition (*b*).

Production and admission of documents.

1024. The practice as to the production and admission of documents (*c*), and with regard to the admission, rejection, and production of evidence, and the mode and order of its reception, are the same as upon the trial of a parliamentary election petition (*d*).

Evidence.

1025. On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that such person was not duly elected, in the same manner as if he had presented a petition against the election of that person (*e*).

Recriminatory case.

1026. If, on the trial of a petition, a recriminatory case is raised, the practice and procedure with regard to the admissibility of such a case and the conduct and hearing thereof are similar to those

(*q*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 36 (1) (e); Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 48 (2), (3); Guardians (London) Election Order, 1898, r. 24 (2) (b); Guardians (Outside London) Election Order, 1898, r. 27 (2) (b).

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (2). As to what must be the nature of such special circumstances, see p. 438, *ante*.

(*a*) See *ibid.*

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 100 (3).

(*c*) See p. 452, *ante*.

(*d*) See p. 445, *ante*. In applying the various provisions to municipal election petitions, the necessary alterations must of course be understood. Thus, "office" must be read for "seat," and other obvious modifications must be made. With such modifications, and with the exception of matters which are, self evidently, applicable only to parliamentary election petitions, and subject to any special provisions relating to municipal election petitions which are set out herein the provisions as to the hearing of a parliamentary election petition may be read as applying to the trial of a municipal election petition.

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (10).

prevailing, in the like instance, on the trial of a parliamentary election petition (*f*).

Scrutiny.

1027. The practice and procedure with regard to a scrutiny are the same as those prevailing with regard thereto in connection with a parliamentary election petition (*g*).

Secrecy of ballot.

1028. A person who has voted at a municipal election by ballot may not in any proceeding questioning the election be required to state for whom he has voted (*h*).

Pursuing inquiry.

1029. The functions of the court with regard to the pursuance of inquiry into charges which may have been raised, when such inquiry is not necessary to the determination of the issue, or in regard to the pursuance of such inquiry after the issue has been determined, are the same as those, in the like regard, of a court trying a parliamentary election petition (*i*).

Once the issue has been determined there is no obligation upon either of the parties to pursue the inquiry (*k*).

Production of documents by town clerk.

1030. Where an order is made for the production by the town clerk of any document in his possession relating to any specified election, the production by the clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of a court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any indorsement appearing on any packet of ballot papers produced by the clerk or his agent shall be evidence of such papers being what they are stated to be by the indorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *primâ facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil (*l*).

Case for High Court.

1031. The provisions as to the reservation by a municipal election court of questions of law for the consideration of the High Court are similar to those regulating the reservation of questions of law by judges trying a parliamentary election petition (*m*), and the practice and procedure with regard thereto are also similar (*n*).

(*f*) See p. 453, *ante*.
(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 100 (3). See p. 454, *ante*.
(*h*) *Ibid.*, s. 104. See p. 419, *ante*.
(*i*) See p. 446, *ante*.
(*k*) See p. 443, *ante*.
(*l*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 43, and Part II., r. 64 (b).
(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (8). See p. 459, *ante*.
(*n*) See p. 460, *ante*.

Determination by election court.

1032. At the conclusion of the trial the election court determines whether the person whose election is complained of, or any and what other person was duly elected, or whether the election was void, and forthwith certifies such determination in writing to the High Court. The determination so certified is final to all intents as to the matters at issue on the petition (*o*). It is the practice for the court in giving judgment to give the reasons on which the judgment is based (*p*).

Report to High Court.

1033. Where a charge is made in an election petition of any corrupt or illegal practice having been committed at the election in question, the election court must, in addition to its certificate and at the time of the making thereof, report in writing to the High Court:—

(1) Whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt or illegal practice (*q*);

(2) The names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice (*r*);

(3) Whether any corrupt practices have extensively prevailed at such election in the borough or in any ward thereof, or whether there is reason to believe that any corrupt practices have so prevailed (*s*);

(4) Whether any candidate at such election has been guilty by his agents of any corrupt practice in reference thereto (*t*);

(5) Where an illegal practice is charged in the petition, whether any candidate at such election has by himself or by his agents been guilty of an illegal practice in reference thereto (*a*).

If any person or persons is or are reported to have been guilty of any corrupt or illegal practice the election court is further to report—

(6) Whether or not such person or persons has or have been furnished with a certificate of indemnity (*b*).

Where, upon the trial of an election petition, it is found by the election court that illegal practices, or offences of illegal payment, employment, or hiring, committed in reference to the election in question for the purposes of promoting the election of a candidate thereat, have so extensively prevailed that they may be reasonably

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (4); see also p. 460, *ante*.

(*p*) See p. 461, *ante*.

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (5) (a); Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 8 (1). He will not be deprived of his franchise unless his knowledge and consent can be shown (*Morris* v. *Shrewsbury Town Clerk*, [1909] 1 K. B. 342).

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (5) (b); Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 8 (1).

(*s*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (5) (c).

(*t*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 3 (2).

(*a*) *Ibid.*, s. 8 (2).

(*b*) *Ibid.*, s. 30; Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 60.

supposed to have affected the result of the election, the election court is to report such finding to the High Court (*c*).

When report to be laid before Attorney-General.

1034. Where any person or persons is or are reported to have been guilty of any corrupt or illegal practice, the report should be laid before the Attorney-General with a view to his instituting or directing a prosecution against any such person or persons who may not have received a certificate of indemnity, if the evidence should, in the opinion of the Attorney-General, be sufficient to support a prosecution (*d*).

Notice to reported person.

1035. Before any person who is neither a party to an election petition nor a candidate on whose behalf the office is claimed thereby is reported by the election court to have been guilty of any corrupt or illegal practice, the court must cause notice to be given to such person, and if he appears, in pursuance thereof, the court is to give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported (*e*).

Vacation of seat in consequence of report.

1036. If any person, in consequence of the report of an election court, becomes incapable of being elected to or sitting in the House of Commons, or of being elected to or holding any public or judicial office, and if such person at the date of such report has been so elected or holds any such office, then his seat or office, as the case may be, is to be vacated as from that date (*f*).

Special report by election court.

1037. At the time of making its report to the High Court the election court may also make a special report thereto as to any matters arising in the course of the trial an account of which, in its judgment, ought to be submitted to the High Court (*g*). This report is not final and conclusive as to the matters contained in it (*h*).

Conclusion of petition.

1038. When the commissioner has given his judgment and has signed and delivered the certificate which he makes to the High Court, the petition is concluded, and is, therefore, no longer affected by any event which may happen during the time which intervenes between the moment when the commissioner has finally parted with his certificate and the moment when it reaches the High Court, though such event be one which, if it had happened earlier, would have caused the petition to abate or drop (*i*).

(*c*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 18.

(*d*) *Ibid.*, s. 30; Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 60.

(*e*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 23, and Sched. III., Part II., applying Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 38 (1). As to the practice thereupon, see note (*m*), p. 462, *ante*.

(*f*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 31. The same consequences follow from a conviction under the Act (*ibid.*).

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 93 (6).

(*h*) See note (*n*), p. 462, *ante*.

(*i*) See p. 462, *ante*.

Discretion as to costs.

1039. All the costs of a petition or incidental to it, or of any proceedings in connection therewith, with the exception of those specifically provided for by the Municipal Corporations Act, 1882, as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*k*), are to be borne by the parties in such manner and proportion as the election court may determine. In particular any costs, charges, or expenses which in the opinion of the court have been caused by vexatious conduct, unfounded allegations, or unfounded objections, on the part either of the petitioner or of the respondent, and any needless expense incurred or caused by either of the parties, may be ordered to be defrayed by the party by whom it has been incurred or caused, whether such party is or is not successful on the whole (*l*).

Practice.

The principles, practice, and procedure which prevail upon the trial of a parliamentary election petition in regard to the dealing with costs (*m*) apply also to the dealing therewith upon the trial of a municipal election petition (*n*).

The discretion of the election court in dealing with costs is absolute, and cannot be interfered with after it has been exercised (*o*).

Expenses of witnesses.

1040. The reasonable expenses incurred by any person in appearing to give evidence at the trial may be allowed him, according to the scale allowed to witnesses on the trial of civil actions at the assizes, by a certificate of the election court or of the prescribed officer (*p*).

High Court principles to apply.

The provisions as to the ascertainment and certifying of the expenses of witnesses are similar to those prevailing as regards a parliamentary election petition (*q*). The principles of the rules and regulations of the Supreme Court with regard to costs in actions, causes, and matters in the High Court, and, as far as practicable, the rules and regulations themselves, are to apply to the costs of municipal election petitions and of other proceedings under Part IV.

(*k*) As to special provisions as to costs under this latter Act, see pp. 521—523, *post*.

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 98 (1).

(*m*) See p. 472, *ante*.

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 98 (1), which is almost identically the same as s. 41 of the Parliamentary Elections Act, 1868, which deals with the costs of a parliamentary election petition.

(*o*) *Lovering* v. *Dawson* (No. 2) (1875), L. R. 10 C. P. 726.

(*p*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 94 (9). See p. 478, *ante*, as to the question of who is meant by the "prescribed officer" in this connection. The duties assigned to the prescribed officer are to be performed by the master (see *ibid.*, s. 100 (5)). R. 53 of the Municipal Election Petition Rules, however, says that "the amount to be paid to any witness whose expenses shall be allowed by the commissioner trying the petition shall be ascertained and certified by the registrar, or, in the event of his becoming incapacitated from giving such certificate, by the commissioner.

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 94 (9); Municipal Election Petition Rules, r. 53; see p. 477, *ante*.

of the Municipal Corporations Act, 1882, and under the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*r*).

Costs of Public Prosecutor.

1041. The costs of the Director of Public Prosecutions, including the remuneration of his representatives, are payable, in the first instance, by the Treasury, and, so far as they are not, in the case of any prosecution, paid by the defendant, they are to be treated as expenses of the election court and are to be paid accordingly (*s*); but if for any reasonable cause it seems just to the court to do so, the court is to order all or part of the costs to be repaid to the Treasury by the parties to the petition, or such of them as the court may direct (*t*).

Where returning officer respondent.

1042. The practice with regard to the disposition of costs where a returning officer is respondent is the same as that prevailing in the like case in parliamentary election petitions (*a*).

Office fees.

1043. The office fees payable for inspection, office copies, enrolment, and other proceedings are the same as those payable for like proceedings according to the practice of the High Court (*b*).

Costs to be taxed.

1044. Costs are to be taxed by the master, or at his request by any master of the Supreme Court (Taxing Department), upon the order by which they are payable. Costs, when taxed, may be recovered in like manner as if payable under a judgment or order of a judge in the ordinary proceedings in the High Court (*c*). If there is money in the Bank of England available for the purpose, they may up to the extent of such money be recovered by order of the Lord Chief Justice (*d*).

Forfeiture of recognisances.

1045. If a petitioner neglect or refuse for the space of three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and, if such neglect or refusal be, within a year after such demand, proved to the satisfaction of the High Court, every person who has under the Municipal Corporations

(*r*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 29 (3). The section goes on to say that the taxing master is not to allow any such costs, charges or expenses on a higher scale than that which would be allowed in any action, cause or matter in the High Court on the higher scale as between solicitor and client. But it would seem that now in virtue of the Rules of the Supreme Court, Ord. 65, r. 27 (29), the master is no longer so restricted. See *McIver & Co., Ltd.* v. *Tate Steamers, Ltd.*, [1902] 2 K. B. 184, C. A.; *Re Ermen, Tatham* v. *Ermen*, [1903] 2 Ch. 156; *Cavendish* v. *Strutt*, [1904] 1 Ch. 524; *Re Burroughs, Wellcome & Co.'s Trade Marks* (1904), 22 R. P. C. 164. In the *Shrewsbury Case*, 1903 (Rogers on Elections, Vol. III., 18th ed., p. 714), these were followed by BUCKNILL, J.

The court seldom makes an order for costs on the higher scale (*Kennington Division Case* (1886), 4 O'M. & H. 93, 95); see note (*k*), p. 477, *ante*.

(*s*) As to payment of the expenses of the election court, see p. 491, *ante*.

(*t*) Municipal Elections (Corrupt and Illegal Practices), Act, 1884 (47 & 48 Vict. c. 70), s. 28 (9); see note (*t*), p. 475, *ante*.

(*a*) See p. 476, *ante*.

(*b*) Municipal Election Petition Rules, r. 68.

(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 98 (2); Municipal Election Rules, r. 68.

(*d*) *Ibid.*

SECT. 2. In Municipal Elections.

Act, 1882, entered into a recognisance relating to the petition is to be held to have made a default in his recognisance. The master is thereupon to certify the recognisance to be forfeited, and it is to be dealt with as a forfeited recognisance relating to a parliamentary election petition (*e*).

Debt constituted by costs.

1046. Where under the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, or under an order of a municipal election court, any costs or other sums are payable by any person, they constitute a simple contract debt due from such person to the person or persons to whom they are to be paid and are recoverable accordingly; if they are payable to the Treasury they constitute a debt to the Crown and are recoverable accordingly (*f*).

Costs of application for relief.

1047. Where a candidate applies to the election court under the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, ss. 20 and 21, for relief in accordance with the provisions therein contained, he must bear the costs of the relief so obtained, and if the application be opposed it is the practice to order the applicant to pay the costs of the opposition to it (*g*).

Order as to payment of costs by borough or special person.

1048. If upon the trial of a petition it appears to the election court that it has not been proved that a corrupt practice has been committed in reference to the election in question by or with the knowledge and consent of the respondent, and that the respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more of the following orders with respect to the payment of the whole of the costs of the petition, or of such part of the costs as the court may think fit:—

(1) If it appears to the court that corrupt practices have extensively prevailed in reference to such election, the court may order the whole or part of the costs to be paid by the borough.

(2) If it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by such person or persons or any of them, and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition (*h*).

Where any person appears to the court to have been guilty of the

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 98 (3); see p. 480, *ante*.
(*f*) *Ibid.*, s. 32 (2).
(*g*) See pp. 476, 477, *ante*.
(*h*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 29 (1).

offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to such offence or to such person to be paid by such person (*i*).

Costs in boroughs.

1049. Where under an order of a municipal election court any costs of a petition are to be paid by a borough, such costs are to be paid out of the borough fund or borough rate (*k*).

Repayment to Treasury.

1050. The election court may, in its discretion, order that the remuneration and allowances payable to the commissioner in respect of the trial of an election petition, and to any officers, clerks, or shorthand writers and the expenses incurred by the town clerk in receiving the election court, be repaid wholly or in part to the Treasury or to the town clerk, as the case may be—

(1) By the petitioner, if in the opinion of the election court the petition is frivolous and vexatious; or

(2) By the respondent, when in the opinion of the election court he has been personally guilty of corrupt practices at the election (*l*).

Such an order may be enforced as an order for payment of costs (*m*). But a deposit made or a security given as hereinbefore prescribed is not to be applied for any such repayment to the Treasury or to the town clerk until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied (*n*).

Expenses of witnesses called by court.

1051. The expenses of witnesses called and examined by the election court are to form part of the expenses of providing a court (*o*).

Master's order.

1052. The order of the master for payment of costs has the same force as an order made by a judge, and may be enforced in like manner as a judge's order in an ordinary proceeding in the High Court (*p*).

Vesting of right to costs.

1053. When the petition is finally concluded by the judgment of the election court and the giving of the certificate under the hand of the court, if the court has, also, by the same time given its decision as to costs, the right of the party or parties to whom such costs are awarded becomes vested, and the right to have such costs taxed will not be affected by any event happening after such conclusion of the petition, which, if it had happened earlier, might have caused the petition to abate or drop (*a*).

(*i*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 29 (2).
(*k*) *Ibid.*, s. 32 (1).
(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 101 (2).
(*m*) See p. 521, *ante*.
(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 101 (3).
(*o*) *Ibid.*, s. 94 (9).
(*p*) Municipal Election Petition Rules, r. 34.
(*a*) See note (*f*) on p. 480, *ante*.

In Municipal Elections.

Corrupt practices.

1054. A person who commits any corrupt practice in reference to a municipal election, becomes guilty of the like offence, and upon conviction is liable to the like punishment and is subject to the like incapacities as if the corrupt practice had been committed in reference to a parliamentary election (*b*).

Treating etc. by candidate or with his knowledge and consent.

1055. Where the election court reports that any corrupt practice other than treating and undue influence, has been proved to have been committed, with reference to the election in question, by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed at such election by any such candidate, that candidate shall not be capable of ever holding a corporate office in the borough to which or to any ward of which the election related, and if he has been elected his election shall be void. He is, further, to be subject to the same incapacities as if, at the date of such report, he had been convicted of a corrupt practice (*c*).

Candidate's agent guilty.

1056. Where upon the trial of a petition charging the commission of a corrupt practice in respect to the election in question the election court reports that any candidate at such election has been guilty by his agents of any corrupt practice in reference thereto, that candidate shall not be capable of being elected to or holding any corporate office in the borough to which or to any ward of which the election related during a period of three years from the date of the report, and if he has been elected his election is to be void (*d*).

Extensive prevalence of illegal practices.

1057. Where, upon the trial of an election petition respecting a municipal election for a borough or ward of a borough, the election court reports that illegal practices or offences of illegal payment, employment, or hiring committed in reference to such election for the purpose of promoting the election of a candidate thereat have so extensively prevailed that they may be reasonably supposed to have affected the result of the election, if such candidate has been elected his election is to be void, and he is not during the period for which he was elected to serve, or for which if elected he might have served, to be capable of being elected to or of holding any corporate office in the said borough (*e*).

Candidate guilty himself.

1058. Where, upon the trial of a petition charging the commission of an illegal practice in reference to the election in question, the election court reports that any candidate at such election has been guilty by himself or his agents of any illegal practice in reference thereto, such candidate shall not be capable of being elected to or of holding any corporate office in the borough to which or to any

(*b*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 2 (2).

(*c*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 3 (1).

(*d*) *Ibid.*, s. 3 (2). But, where the corrupt practice consists of treating and undue influence, or either of these offences, as to the authorised excuse and exception which obviate such incapacitation and avoidance of the election, see *ibid.*, s. 19, and p. 398, *ante*.

(*e*) *Ibid.*, s. 18.

ward of which the election related during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected his election is to be void (*f*). If the report is that such candidate has himself been guilty of such illegal practice he is further to be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice (*g*).

Special persons guilty.

1059. If a justice of the peace, a barrister, a solicitor, or a person belonging to any profession the admission to which is regulated by law is reported by the election court to have been guilty of any corrupt practice, or if a licensed person is reported to have knowingly suffered any bribery or treating in relation to any election to take place upon his licensed premises, the provisions consequential upon such report are the same as those consequential upon such report by a court trying a parliamentary election petition (*h*).

Perjured evidence.

1060. The provisions as to the removal of an incapacity resulting from a report by an election court based upon evidence which subsequently proves to have been perjured are the same as those prevailing in the like case with relation to a report made by a court trying a parliamentary election petition (*i*).

Part VII.—Criminal Law, Penal Actions and Injunctions.

SECT. 1.—*Criminal Law.*

Different kinds of offences.

1061. There are certain offences not falling within the provisions of the ordinary criminal law which can be committed in relation to elections.

SUB-SECT. 1.—*Felonies.*

Personation.

1062. Personation (*k*), or the aiding, abetting, counselling or procuring (*l*) of that offence, is a felony (*m*). Proceedings may be commenced either at the time of the election or subsequently (*n*).

(*f*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 8 (2).

(*g*) *Ibid.* But as to authorised excuses and exceptions, see Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), ss. 19, 20, 21 (7).

(*h*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 23, Sched. III., Part II., applying Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 38 (6), (7), (8); see p. 485, *ante*. A candidate reported for a corrupt practice committed by his agents without his knowledge and consent is not disentitled to be put on the register for the period of seven years (*Morris* v. *Shrewsbury Town Clerk*, [1909] 1 K. B. 342).

(*i*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 30; Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 46. See p. 486, *ante*

(*k*) See p. 292, *ante*.

(*l*) See title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 254.

(*m*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 6 (2). As to whether an indictment would lie for fraudulent personation at common law, see *R.* v. *Bent* (1846), 2 Car. & Kir. 179. But in Ireland PALLES, C.B., doubted the law stated by WILLIAMS, J., in that case, and was prepared to hold that such an indictment would be good (*R.* v. *Clarke*, [1900] 2 I. R. 304, 306).

(*n*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 86—90;

SECT. 1. Criminal Law.

Prosecution by personation agents.

1063. If at the time a person applies for a ballot paper at the election, or after he has so applied, and before he leaves the polling station, a personation agent (*o*) duly appointed declares to the returning officer, or his deputy presiding therein, that he verily believes and undertakes to prove that the said person so applying is not in fact (*p*) the person in whose name he so applies, or to the like effect, then the returning officer or his deputy (which expression includes a presiding officer, but not a clerk (*a*)) is required, immediately after such person has applied for a ballot paper, to order any constable or other peace officer to take the said person into his custody, which order will be a sufficient warrant and authority to the constable or peace officer for so doing (*b*).

Offender taken before two justices.

1064. Every such constable or peace officer must take such person at the earliest convenient time before two justices of the peace acting in and for the constituency (*c*). But in case the attendance of two such justices cannot be procured within the space of three hours after the close of the poll on the same day on which such person shall have been taken into custody, the said constable or peace officer is required, at the request of such person, to take him before any one justice of the peace acting as aforesaid, and such justice is authorised and required to liberate him on his entering into a recognisance, with one sufficient surety, conditioned to appear before any two such justices, at a time and place to be specified in such recognisance, to answer the said charge; and if no such justice is found within four hours after the closing of the said poll, then such person must be forthwith discharged from custody (*d*). If in consequence of the absence of such justices, or for any other cause, the said charge cannot be inquired into within the time aforesaid, any two such justices may inquire into the same on the next or on some other subsequent day and, if necessary, may issue their warrant for the apprehension of the person so charged (*e*). If on the hearing of the charge the two justices are satisfied upon the evidence on oath of not less than two credible witnesses that the person brought before them has knowingly personated and falsely applied for a ballot paper in the name of some other person, and is not in fact the person in whose name he so applied, then the two justices may commit the said offender to the local gaol to take his trial, and may bind over the witnesses in their respective recognisances to appear and give evidence on such trial as in the case of misdemeanours (*f*).

Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 24; and Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 43—45.

(*o*) See p. 321, *ante*.

(*p*) If he is the person intended, and the overseers have merely made a mistake in his name, this is not personation (*R.* v. *Fox* (1887), 16 Cox, C. C. 166).

(*a*) Ballot Act, 1872 (35 & 36 Vict. c. 33), Sched. I., Part I., r. 50.

(*b*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 86, as amended by Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 15.

(*c*) *Ibid.*, s. 87.

(*d*) *Ibid.*

(*e*) *Ibid.*

(*f*) *Ibid.*, s. 88. The section says "other misdemeanours"; but personation is now a felony (see p. 525, *ante*); see also Ballot Act, 1872 (35 & 36 Vict.

Compensation on acquittal.

1065. If the justices, on the hearing of the charge, are satisfied that the person charged with personation is really and in truth the person in whose name he applied for a ballot paper, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or someone on his behalf, does not appear to support such charge before the said justices, then they must make an order in writing under their hands on the said agent so declaring to pay to the person so falsely charged, if he consents to accept the same, any sum, not exceeding the sum of £10 nor less than £5, by way of damages and costs; and if such sum is not paid within twenty-four hours after the order has been made, then the same must be levied, by warrant under the hand and seal of any justice of the peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent; and in case no sufficient goods or chattels of the said agent can be found on which such levy can be made, then the same is to be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum is not paid or levied in the manner aforesaid, then the said person to whom the said sum of money was so ordered to be paid may recover the same from the said agent or candidate, with full costs of suit, in an action of debt to be brought in the High Court (*g*). If the person so falsely charged has declared to the said justices his consent to accept such sum by way of damages and costs, and if the whole amount of the sum so ordered to be paid has been paid or tendered to such person, the said agent, candidate, and every other person is to be released from all actions or other proceedings, civil or criminal, for or in respect of the said charge and apprehension (*h*). The high sheriff of any county and the mayor or returning officer of any city or borough must provide a sufficient attendance of constables or peace officers in each polling station within their respective counties, cities or boroughs (*i*).

Returning officer's duty.

1066. It is the duty of the returning officer (*k*) to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, committing, or procuring the commission of the offence of personation, by any person at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, are to be allowed by the court in the same manner in which courts are empowered to allow the same in other cases of felony (*l*).

c. 33), s. 15, as to the meaning of "assuming to vote" ("assuming to vote" is by that section the same as "applying for a ballot paper").

(*g*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 89. The duty of the justices to make an order is apparently enforceable by mandamus. A rule was granted in *R.* v. *Kilmersdon Justices, Ex parte Benn* (1910, March 17, unreported). But PHILLIMORE, J., doubted whether the applicant could establish his rule.

(*h*) *Ibid.*

(*i*) *Ibid.*, s. 90.

(*k*) See pp. 258 *et seq.*, *ante*.

(*l*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 24. The section says "in cases of felony"; but personation is now itself a felony (see p. 525, *ante*).

SECT. 1. Criminal Law.

Director of Public Prosecutions.

1067. It is the duty of the Director of Public Prosecutions, without any direction from the election court, if it appears to him that any person who has not received a certificate of indemnity has been guilty of personation, to prosecute such person for the offence before the said court, or before any other competent court (*m*).

Indictment.

1068. It is not necessary to state in an indictment for personation, nor to prove at the trial, that the presiding officer at the polling station where the offence was committed was duly appointed (*n*).

Time limitation.

The proceeding must be commenced before the expiration of the statutory period of limitation (*o*).

Punishment.

1069. Any person convicted of personation, or of aiding, abetting, or procuring, on indictment is to be punished by imprisonment for a term not exceeding two years, together with hard labour (*p*), in addition to which he will not be capable during a period of seven years from the date of his conviction of being registered as an elector or voting at any election in the United Kingdom, whether it be a parliamentary election or an election for any public office, or of holding any public or judicial office; and if he holds any such office the office will be vacated (*q*). Any person so convicted in reference to any election will also be incapable of being elected to, and of sitting in, the House of Commons during the seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons his election will be vacated from the time of such conviction (*r*).

SUB-SECT. 2.—*Indictable Misdemeanours.*

Corrupt practices.

1070. Every "corrupt practice" other than personation or the aiding, abetting, counselling, or procuring of that offence, and

(*m*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 43 (3). See p. 535, *post.*

(*n*) So held by the Court for the Consideration of Crown Cases Reserved in Ireland (*R.* v. *Garvey* (1887), 16 Cox, C. C. 252).

(*o*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 51. A proceeding against a person in respect of the offence of a corrupt or illegal practice, or any other offence under the Corrupt Practices Prevention Acts or this Act, must be commenced within one year after the offence was committed, or if it was committed in reference to an election with respect to which an inquiry is held by election commissioners, must be commenced within one year after the offence was committed, or within three months after the report of such commissioners, whichever period last expires, so that it be commenced within two years after the offence was committed; and the time so limited by this section is, in the case of any proceeding under the Summary Jurisdiction Acts for any such offence, whether before an election court or otherwise, to be substituted for any limitation of time contained in the last-mentioned Acts (*ibid.*, s. 51 (1)). For the purposes of this section the issue of a summons, warrant, writ or other process is to be deemed to be a commencement of a proceeding, when the service or execution of the same on or against the alleged offender is prevented by the absconding or concealment of the alleged offender, but save as aforesaid the service or execution of the same on or against the alleged offender, and not the issue thereof, is to be deemed to be the commencement of the proceeding (*ibid.*, s. 51 (2)).

(*p*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 6 (2).

(*q*) *Ibid.*, s. 6 (3).

(*r*) *Ibid.*, s. 6 (4).

whether at parliamentary or municipal elections (*s*), is an indictable misdemeanour (*t*). The indictment should state the particular corrupt practice of which the prisoner is alleged to have been guilty (*a*). It is not essential that the date of the election should be given in the indictment (*b*). If a private prosecutor initiates the proceedings he must give security for costs, and pay the costs in the event of acquittal (*c*).

Punishment.

Any person convicted on indictment of such a corrupt practice is liable to be imprisoned, with or without hard labour, for a term not exceeding one year, or to be fined any sum not exceeding £200 (*d*); and he will be subject to the same disabilities as in the case of a conviction for personation (*e*). The proceeding must be commenced before the expiration of the statutory period of limitation (*f*).

Bribery.

Bribery at a parliamentary (*g*) or municipal (*h*) election is a misdemeanour at common law, and proceedings may be taken either by indictment (*i*) or by information (*k*).

False expenses declaration.

1071. An intentionally false declaration respecting election expenses (*l*) is not only a corrupt practice, but it is an offence specially made indictable by statute, and on conviction thereof the offender is liable to punishment for wilful and corrupt perjury.

(*s*) Municipal Elections (Corrupt and Illegal Practices Act), 1884 (47 & 48 Vict. c. 70), s. 2. A person who commits any corrupt practice in reference to a municipal election is guilty of the like offence, and on conviction is liable to the like punishment and subject to the like incapacities as if the corrupt practice had been committed in reference to a parliamentary election (*ibid.*).

(*t*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 6 (1).

(*a*) *R.* v. *Stroulger* (1886), 17 Q. B. D. 327, C. C. R.; *R.* v. *Norton* (1886), 16 Cox, C. C. 59. It is sufficient to state that he was guilty of bribery or undue influence, as the case may be (Corrupt Practices Prevention Act, 1863 (26 & 27 Vict. c. 29), s. 6). The certificate of the returning officer is sufficient proof of the due holding of the election (*ibid.*). It has been held by the Court for the Consideration of Crown Cases Reserved in Ireland that it is not necessary to lay in the indictment or prove the appointment of the returning officer (*R.* v. *Garvey* (1887), 16 Cox, C. C. 252).

(*b*) *R.* v. *Yeoman* (1904), 20 T. L. R. 266.

(*c*) Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), ss. 12, 13; Corrupt and Illegal Practices Act, 1883 (46 & 47 Vict. c. 51), s. 53 (1). So in municipal elections (Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 30; and see *R.* v. *Law*, [1900] 1 Q. B. 605).

(*d*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 6 (1).

(*e*) *Ibid.*, s. 6 (3), (4); see pp. 484, 528, *ante*.

(*f*) *Ibid.*, s. 51. See title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 294.

(*g*) *R.* v. *Pitt and Mead* (1762) 3 Burr. 1335. Compare *Long's Case* (1571), Journals of the House of Commons of 9th May, 1571; 2 Doug. El. Cas. 402. In this last-named case Parliament itself inflicted a fine.

(*h*) *R.* v. *Plympton* (1724), 2 Ld. Raym. 1377.

(*i*) *R.* v. *Lancaster and Warrall* (1890), 16 Cox, C. C. 737.

(*k*) *R.* v. *Pitt and Mead, supra*; *R.* v. *Plympton, supra*; *R.* v. *Smith and Hollis* (1776), 20 State Tr. 1226.

(*l*) The declaration which is here referred to is that which must be made by a candidate and his election agent (Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 33; see pp. 335, 336, *ante*). The offence is to "knowingly make the declaration required by this section falsely" (*ibid.*, s. 33 (7)).

SECT. 1. Criminal Law.

Any person charged with a corrupt practice may, if the circumstances warrant such finding, be found guilty of an illegal practice (which offence for that purpose is an indictable offence (*m*)).

Illegal practices.

Save as aforesaid, an illegal practice is not an indictable offence (*n*).

Fraudulent withdrawal of a petition.

Fraudulent withdrawal of an election petition is an indictable misdemeanour (*o*).

Voting by paid elector.

Voting by an elector who has been employed for reward within six months of an election may be an indictable misdemeanour (*p*).

Returning officer as agent.

A returning officer or his deputy, partner, or clerk acting as agent may commit an indictable misdemeanour (*q*).

False answer to the "two questions."

Any person wilfully making a false answer to either of the two questions which may lawfully be asked him (*r*) at the time when he tenders his vote commits an indictable misdemeanour (*s*). This provision applies also to the case of a municipal election (*t*).

Ballot and nomination papers.

1072. There are several indictable misdemeanours which may be committed by any person tampering with the machinery of the law in connection with nomination papers and with the ballot (*a*).

(*m*) Corrupt and Illegal Practices Prevention Act, 1883 (46 and 47 Vict. c. 51), s. 52.

(*n*) *Ibid.*, s. 10, and see p. 534, *post*, where the punishment for illegal practices will be found.

(*o*) *Ibid.*, s. 41 (4). If any person makes any agreement or terms or enters into any undertaking in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the prescribed affidavits, he will be guilty of a misdemeanour, and will be liable on conviction on indictment to imprisonment for a term not exceeding twelve months and to a fine not exceeding £200.

(*p*) No elector who within six months before or during any election for any county or borough has been retained, hired, or employed for any or all of the purposes of the election for reward by or on behalf of any candidate at an election as agent, canvasser, clerk, messenger, or in other like employment is entitled to vote at such election, and if he so votes he is guilty of a misdemeanour (Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 11).

(*q*) No returning officer for any county or borough, nor his deputy, nor any partner or clerk of either of them, is to act as agent for any candidate in the management or conduct of his election as a member to serve in Parliament for such county or borough; and if any returning officer, his deputy, or the partner or clerk of either of them so votes he will be guilty of a misdemeanour (*ibid.*, s. 50).

(*r*) See p. 319, *ante*.

(*s*) He shall be deemed guilty of a misdemeanour and shall and may be indicted and punished accordingly (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 81). If, however, the voter answered according to his real belief, he has committed no offence. See *R.* v. *Dodsworth* (1837), 8 C. & P. 218; *R.* v. *Ellis* (1842), Car. & M. 564, 567; *R.* v. *Bowler* (1842), Car. & M. 559, 563. If a case is made out it calls for serious notice (*per* Lord DENMAN, C.J., *R.* v. *Harris* (1835), 7 C. & P. 253).

(*t*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 59.

(*a*) The offences in question are as follows:—(1) Forging or fraudulently defacing or fraudulently destroying any nomination paper, or delivering to the returning officer any nomination paper knowing the same to be forged; (2) forging or counterfeiting or fraudulently defacing or fraudulently destroying any ballot paper or the official mark on any ballot paper; (3) without due authority supplying any ballot paper to any person; (4) fraudulently putting

If the offender is a returning officer, or an officer or clerk in attendance at the polling station, he will be liable to imprisonment for any term not exceeding two years, with or without hard labour. If he is any other person he will be liable to imprisonment for any term not exceeding six months, with or without hard labour (*b*). Any attempt to commit any of these offences will be punishable in the manner in which the offence itself is punishable (*c*). At a trial of a prisoner for any such offences the counterfoils and marked register may be given in evidence, and the face of the voting papers inspected for the purposes of justice, every proper precaution to maintain secrecy being observed (*d*).

Punishment.

Wilful neglect to deliver election writs is an indictable misdemeanour (*e*); and any breach of statutory duty by a person whose presence is necessary to the election may be indictable (*f*).

Neglect as to writs.

1073. Perjury in a judicial proceeding before a competent tribunal is an indictable misdemeanour at common law (*g*); but in addition to this there are statutory enactments placing in the same category the giving of false testimony in a revising barrister's court (*h*), or on the trial of an election petition (*i*), or in an inquiry before election commissioners (*k*).

Perjury.

into any ballot-box any paper other than the ballot paper which the offender is authorised by law to put in; (5) fraudulently taking out of the polling station any ballot paper; (6) without due authority destroying, taking, opening, or otherwise interfering with any ballot-box or packet of ballot papers then in use for the purposes of the election (Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 3). In 1909, at the Bermondsey parliamentary election, two women, who desired to make a protest against the law excluding their sex from the parliamentary franchise, threw some liquid into ballot-boxes. They were acquitted of attempting to destroy the ballot papers, but convicted of interfering with the ballot-boxes (*R.* v. *Chapin* (1909), 74 J. P. 71; *R.* v. *Neilan, ibid.*). Interference with ballot papers in a box is equivalent to interference with the ballot-box, see *R.* v. *Chapin, supra,* and *R.* v. *Martin* (1881), 8 Q. B. D. 54.

(*b*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 3.

(*c*) *Ibid.*

(*d*) *R.* v. *Beardsall* (1876), 1 Q. B. D. 458, C. C. R.

(*e*) Parliamentary Writs Act, 1813 (53 Geo. 3, c. 89), s. 6. Every person concerned in the transmitting or delivery of any of these writs, who wilfully neglects or delays to deliver or transmit any such writ, or delays to deliver or transmit any such writ or accepts any fee or does any other matter or thing in violation of the Act, is guilty of a misdemeanour, and may upon any conviction upon any indictment or information in His Majesty's Court of King's Bench be fined and imprisoned at the discretion of the court for such misdemeanour (*ibid.*).

(*f*) See *R.* v. *Corry* (1804), 5 East, 372; *R.* v. *Williams* (1813), 2 M. & S. 141. But such cases are possibly now obsolete in practice. *R.* v. *Williams* was decided under a charter, where the ringing of a bell and other formalities of a like nature formed part of the election proceedings.

(*g*) See title CRIMINAL LAW AND PROCEDURE, Vol. IX., p. 490.

(*h*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 41. Every person taking any oath or affirmation under the Act who wilfully swears or affirms falsely is guilty of perjury (*ibid.*).

(*i*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 31. Witnesses in an election petition are to be subpœnaed or sworn in the same manner as nearly as circumstances admit as in a trial at nisi prius, and are to be subject to the same penalties for perjury (*ibid.*).

(*k*) Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 13. Every person who upon examination upon oath or affirmation before any commis-

SECT. 1. Criminal Law.

At municipal elections.

1074. Forging nomination papers at a municipal election is an indictable misdemeanour (*l*), and so is the wilful making of a false answer to the statutory questions asked at the poll at a municipal election (*m*), and the wilful false answering of the statutory questions at a ballot in the City of London (*n*) and any intentionally false or fraudulent signing of voting papers at a university election (*o*).

1075. The holding of a false election without due authority is said to have been punished by imprisonment (*p*).

SUB-SECT. 3.—*Offences which are summarily triable.*

Jurisdiction of election court, and of revising barristers.

1076. The election court at the trial of an election petition has a certain summary jurisdiction (*q*), and a revising barrister has also at his court a limited summary jurisdiction over overseers, who may be fined by him for neglect of duty.

The High Court has power to fine an election agent or sub-agent who does not comply with any order which it may make as to the declaration and return of election expenses. The fine must not exceed £500 (*r*).

Offences by overseers.

1077. Any overseer who wilfully refuses or neglects to make out any list, or who wilfully neglects to insert therein the name of any person who has given due notice of claim, or who in making out the list of voters wilfully and without reasonable cause omits the name of any person duly qualified to be inserted in such list, or who

sioners appointed under the Act wilfully gives false evidence is liable to the pains or penalties of perjury (*ibid.*).

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 74. If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the town clerk any forged nomination paper knowing it to be forged, he is guilty of a misdemeanour, and is liable to imprisonment for any term not exceeding six months, with or without hard labour (*ibid.*, s. 74 (1)). An attempt to commit any such offence is punishable as the offence is punishable (*ibid.*, s. 74 (2)).

(*m*) *Ibid.*, s. 59 (3).

(*n*) City of London Ballot Act, 1887 (50 Vict., sess. 2, c. xiii.), s. 7 (3).

(*o*) Universities Election Act, 1861 (24 & 25 Vict. c. 53), s. 5. Any person falsely or fraudulently signing any voting paper in the name of any other person either as a voter or as a witness, whether such person is living or dead, and every person signing, subscribing, indorsing, attesting, certifying, tendering, or transmitting as genuine any false or falsified voting paper knowing the same to be false or falsified, and any person falsely making any such declaration as required by the Act or such declaration as is contained in the schedule, or with fraudulent intent, altering, defacing, destroying, withholding, or abstracting any voting paper, and any person wilfully making a false answer to any statutory question put to him by the returning officer, is guilty of a misdemeanour and punishable by fine or imprisonment not exceeding one year (*ibid.*). It was so stated by Serjeant TALFOURD *arguendo* in *R.* v. *Bowler* (1842), Car. & M. 559, 561.

(*p*) See *Bletchingley Case* (1623), Glanville's Rep. p. 29; compare *Blyth's Case* (1705), 2 Doug. 177, where a returning officer who published a pretended bye-law was imprisoned for an "illegal and arbitrary proceeding"; compare also for the principle, the *Liskeard Case* (1804), 2 Peckwell. 324.

(*q*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 43—45.

(*r*) *Ibid.*, s. 34 (2).

wilfully refuses or neglects to publish any notice or list or copy of the part of register of voters relating to his parish or township, at the time and in the manner required by the Act of Parliament, or who wilfully refuses or neglects to deliver to the proper officer the copy of the lists of claimants and of persons objected to, and the copies of the register, as required by the Act, or who wilfully refuses or neglects to attend the revision court, or to attend any revising barrister when required, or who wilfully refuses or neglects to deliver to the barrister the several lists to be made out by him, or who is wilfully guilty of any other breach of duty in the execution of the Act, is for every such offence liable to pay by way of fine a sum of money not exceeding £5 nor less than 20*s.* to be imposed by and at the discretion of the revising barrister. This is not to affect or abridge any right of action against any overseer or other person liable to any fine as aforesaid or any liability such overseer or other person may incur under the relevant statutes (*s*). Every revising barrister when and so often as he imposes any such fine must at the same time in open court, by an order in writing under his hand stating the sum payable for such fine, direct by and to whom and when the same is to be paid, and the person to whom the said sum is so ordered to be paid must receive the same, and must pay over the sum so received by him to the clerk to the county council or town clerk, as the case may require (*t*). In case any such sum of money directed to be paid by any person by way of fine or for costs is not paid according to the terms of such order, it is lawful for any justice of the peace, and he is required, upon proof before him that a true copy of the said order has been served upon or left at the usual place of abode of the person in the said order directed to pay such sum, and that the said sum has been demanded of such person and that he has refused or neglected to pay the same, by warrant under his hand and seal to order the said sum of money, together with the costs of and attending the said warrant, to be levied by distress and sale of the goods and chattels of such person so making default which may be found within the jurisdiction of the said justice, and the overplus, if any, after the said sum of money and costs and the charges of such distress or sale are deducted, must be returned upon demand to the owner of the said goods and chattels. No *certiorari* or other writ or process for the removal of any such order or warrant, or of any order or warrant to be made or issued on account of a false charge of personation or any proceeding thereon respectively, into the High Court is to be allowed or granted (*u*).

1078. There are a number of offences which may be tried in a summary way before justices of the peace. Thus, a person duly served (*v*) with a requisition by the overseers requiring the names

Illegal practices.

(*s*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 51. The relevant statutes are this Act and the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45).

(*t*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 52.

(*u*) *Ibid.*, s. 71.

(*v*) See pp. 196, 197, *ante*.

SECT. 1. Criminal Law.

of the inhabitant occupiers on his property, and failing to comply, is liable on summary conviction to a fine of 40*s*. (*w*).

And, again, illegal practices at parliamentary elections (*x*) are punishable by justices of the peace on summary conviction (*y*). It is sufficient to allege that the person charged was guilty of illegal practices within the meaning of the Act (*z*).

"Illegal practice" includes for this purpose, in the case of parliamentary elections, false statements of fact in relation to the personal character or conduct of the candidate under certain conditions (*a*).

Illegal practices at those municipal elections to which the law for the prevention of illegal practices applies may likewise be tried summarily (*b*).

"Illegal payment, employment, or hiring" are punishable on summary conviction before justices of the peace, whether the offences have been committed at a parliamentary election (*c*) or at any of those municipal elections to which the law forbidding them applies (*d*). It is sufficient to allege that the person charged was guilty of illegal payment, employment, or hiring, as the case may be, within the meaning of the Act (*e*).

(*w*) See pp. 196, 197, *ante*.

(*x*) See pp. 293 *et seq.*, *ante*.

(*y*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 10. A person guilty of an illegal practice under the Act is liable on summary conviction to a fine not exceeding £100 and to be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election, whether it be a parliamentary election or an election for a public office within the meaning of the Act, held for or within the county or borough in which the illegal practice has been committed (*ibid.*).

(*z*) *Ibid.*, s. 53 (3). The returning officer's certificate is sufficient proof as to the election having been duly held and as to who were candidates.

(*a*) Corrupt and Illegal Practices Prevention Act, 1895 (58 & 59 Vict. c. 40), s. 1.

(*b*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 7. A person guilty of an illegal practice in reference to a municipal election is on summary conviction liable to a fine not exceeding £100, and is incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election, whether it be a parliamentary election or an election for a public office within the meaning of the Act, held for or within the borough in which the illegal practice has been committed (*ibid.*).

(*c*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 21. A person guilty of an offence of illegal payment, employment, or hiring is on summary conviction liable to a fine not exceeding £100 (*ibid.*, s. 21 (1)). A candidate or an election agent of a candidate who is personally guilty of an offence of illegal payment, employment, or hiring is guilty of an illegal practice (*ibid.*, s. 21 (2)). What is illegal payment, employment, or hiring has been set forth on pp. 300 *et seq.*, *ante*.

(*d*) Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), s. 17. The words are not identical with the parliamentary Act. A person guilty of an offence of illegal payment, employment, or hiring is on summary conviction liable to a fine not exceeding £100 (*ibid.*, s. 17 (1)). When an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate is guilty of an illegal practice (s. 17 (2)).

(*e*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 53 (3).

Infringement of the secrecy of the ballot is an offence triable summarily (*f*). Infringement of secrecy.

Misconduct in the polling station is dealt with summarily (*g*). Misconduct.

The offences in connection with the ballot which may be tried summarily are the same in the City of London as elsewhere, but a summary conviction cannot take place in the City except before two magistrates of the said City sitting at the Mansion House or Guildhall Justice Room (*h*). London.

A prohibited person voting at a local government election may be fined (*i*). Local government election.

SUB-SECT. 4.—*The Criminal Jurisdiction of the Election Court.*

1079. The election court (*k*) has a peculiar criminal jurisdiction of its own (*l*), which is, however, not very often exercised (*m*). Jurisdiction of the election court additional to that of the ordinary courts.

(*f*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 4. Every officer, clerk, and agent in attendance at a polling station must maintain and aid in maintaining the secrecy of the voting in such station, and must not communicate, except for some purpose authorised by law, before the poll is closed to any person any information as to the name or number on the register of voters of an elector who has or has not applied for a ballot paper or voted at that station or as to the official mark; and no such officer, clerk, or agent, and no person whomsoever, must interfere with or attempt to interfere with a voter when marking his vote or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes must maintain and aid in maintaining the secrecy of the voting, and must not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person must directly or indirectly induce any voter to display his ballot paper after he has marked the same so as to make known to any person the name of the candidate for or against whom he has so marked his vote. Every person who acts in contravention of these provisions is liable on summary conviction before two justices of the peace to imprisonment for any term not exceeding six months, with or without hard labour (*ibid.*).

(*g*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately by order of the presiding officer be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed must not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day. Any person so removed, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace. The powers thus conferred are not to be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station (*ibid.*).

(*h*) City of London Ballot Act, 1887 (50 Vict., sess. 2, c. xiii.), s. 8.

(*i*) Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 46 (8). If any person acts when disqualified or votes when prohibited under this section, he will for each offence be liable on summary conviction to a fine not exceeding £20 (*ibid.*).

(*k*) For explanation of the phrase "the election court," see pp. 408, 486, *ante*.

(*l*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 43.

(*m*) The Director of Public Prosecutions has discretion as to where it is best that the criminal trial should take place (*Ipswich Case* (1886), 4 O'M. & H. 70, 75). The Irish court has said that the initiative should be left to the Attorney-General (*Belfast Borough Western Division Case* (1886), 4 O'M. & H. 105, 109).

SECT. 1. Criminal Law.

Practice.

Where a person is prosecuted before an election court for any corrupt or illegal practice and appears before the court, the court must proceed to try him summarily for the said offence, and such person, if convicted, is subject to the same incapacities as if he had been convicted on indictment or in any other proceeding for the said offence; and, further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding £200, and if the offence is an illegal practice to pay the prescribed fine (*n*).

In case of a corrupt practice the court before proceeding to try any person summarily must give him the option of being tried by a jury (*o*).

Order for prosecution.

1080. Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, which may be in any part of England (*p*), the court, if of opinion that the evidence which has been adduced against the said person on the trial of the petition for the purpose of reporting him and rendering him liable to be indicted or prosecuted (*q*) is sufficient to put the said person upon his trial for the offence, must order such person to be prosecuted on indictment, or before a court of summary jurisdiction, as the case may require, for the said offence; and in either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence is to be deemed to have been committed within the jurisdiction of the court so named (*a*).

Committal for trial.

1081. Upon such order being made, if the accused person is present before the court and the offence is an indictable offence, the court must commit him to take his trial, or cause him to give bail to appear and take his trial, for the said offence; and if the accused person is present before the court (*b*), and the offence is not an indictable offence, the court must order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted or cause him to give bail to appear before that court (*c*); and if the accused person is not present before the court the court must, as circumstances require, issue a summons for his attendance or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable one, on proof only of the summons or warrant and the identity of the accused, must commit him to take his trial or cause him to give bail to appear to take his trial for the said offence, or, if the

(*n*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 43 (4).
(*o*) *Ibid.*
(*p*) *R.* v. *Ripley* (1890), 17 Cox, C. C. 120, C. C. R.; *R.* v. *Campion* (1890), 17 Cox C. C. 120, C. C. R.
(*q*) *R.* v. *Shellard* (1889), 23 Q. B. D. 273, *per* MANISTY, J., at p. 279.
(*a*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51) s. 43 (5).
(*b*) *Ibid.*, s. 43 (6) (a).
(*c*) *Ibid.*, s. 43 (6) (b).

offence is punishable on summary conviction, must proceed to hear the case, or, if such court be not the court before whom he is directed to be prosecuted, must order him to be brought before that court (*d*).

Application of powers to commissioner trying municipal petition.

1082. A commissioner appointed to try a municipal election petition has all the powers of an election court above set out, except that any fine or order of committal by him may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit (*e*).

SECT. 2.—*Penal Actions and Injunctions.*

SUB-SECT. 1.—*Penal Actions.*

Statutory actions.

1083. In addition to the common law action to which every officer or person who deprives another of his legal rights is liable (*f*), there are several statutory actions peculiar to the present subject.

Fraudulent conveyances.

Thus, where fraudulent conveyances are made to multiply votes within the meaning of the statutes passed to make such conveyances null and void (*g*), a common informer may recover in the High Court the sum of £40 for each such conveyance or vote, together with full costs against (1) any person making or executing such a conveyance; (2) any person who, being privy to the purpose, devises or purposes the same; or (3) any person voting by colour thereof (*h*).

(*d*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 43 (6) (c). If any person upon whom any summons shall have been served by the delivery thereof to him, or by the leaving thereof at his usual place of abode, fails to appear before the commissioners at the time and place specified in such summons, it is lawful for the said commissioners to certify such default under their hands and seals, or under the hand and seal of any one of them, to any of His Majesty's superior courts in England or Ireland, or to the Court of Session in Scotland, or to the Lord Ordinary on the Bills in the said court, as the case may be; and thereupon such court or judge must proceed against the person so failing to attend in the same manner as if the said person had failed to obey any writ of subpœna or any process issuing out of the said court; and if any person so summoned to attend as aforesaid, or, having appeared before the said commissioners, refuses to be sworn or to make answer to such questions as are put to him touching the matters in question by the said commissioners, or to produce and show to the said commissioners any papers, books, deeds, or writings being in his possession or under his control which the commissioners may deem necessary to be produced, or if any person is guilty of any contempt of the said commissioners or their officers, the said commissioners have such and the same powers to be executed in the same way as any judge of any of His Majesty's superior courts of England or Ireland, or of the Court of Session in Scotland, may now by law exercise in that behalf; and all head-boroughs, gaolers, constables, and bailiffs must, and they are required to, give their aid and assistance to the said commissioners in the execution of their office (Election Commissioners Act, 1852 (15 & 16 Vict. c. 57), s. 12).

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 92 (6).

(*f*) *Ashby* v. *White* (1703), 2 Ld. Raym. 938; 1 Sm. L. C., 11th ed., 240; 14 State Tr. 695; compare *Pryce* v. *Belcher* (1847), 4 C. B. 866, 883; *Tozer* v. *Child* (1857), 7 E. & B. 377, 382, Ex. Ch.; *Cullen* v. *Morris* (1819), 2 Stark. 577; *Drewe* v. *Coulton* (1787), 1 East, 563, n.; and *Milward* v. *Sargeant* (1786), *ibid.* 567; and compare notes (*a*) and (*b*) on p. 312, *ante*. See also *Pickering* v. *James* (1873), L. R. 8 C. P. 489.

(*g*) See p. 153, *ante*.

(*h*) Elections (Fraudulent Conveyances) Act, 1711 (10 Ann. c. 31), s. 1,

SECT. 2. Penal Actions and Injunctions.

1084. Penalties may be recovered by a common informer in summary proceedings before magistrates in case of the destroying, mutilating, effacing, or removing of notices, lists, or other documents affixed to public buildings for the purposes of the revision (*i*).

Destroying lists etc.

Misfeasance of public officers.

1085. Sheriffs, under-sheriffs, clerks of the county council, town clerks, secondaries, returning officers, clerks of the Crown, postmasters, overseers, and other persons or public officers having duties under the laws enacted for the purposes of parliamentary registration are all liable for wilful misfeasance in a penal action at the suit of the party aggrieved (*k*).

Revising barristers.

A revising barrister is also in some circumstances liable in a similar action (*l*).

Offences in connection with writ.

1086. Besides the general provisions above set out there is an ancient penal action which applies to any case of wilful offending on the part of a sheriff, under-sheriff, mayor, bailiff, or other officer in connection with the execution of any writ or precept for electing members to serve in Parliament, and in case of such wilful offending—that is to say, if the offender does not issue the writ with expedition or if he gives or takes any fee in connection with the matter (*m*)—he will be liable to a penal action at the suit of the party aggrieved (*n*).

and Parliamentary Elections (Fraudulent Conveyances) Act, 1739 (13 Geo. 2, c. 20). "For every conveyance so made or vote so created or given the offender is to forfeit the sum of £40 to any person who sues for the same, to be recovered in the High Court" (*ibid.*).

(*i*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 25. The penalty is not less than 10*s.* or more than 40*s.*

(*k*) *Ibid.*, s. 97. All such persons required by this Act to do any matter or thing will for every wilful misfeasance or wilful act of commission or omission contrary to this Act forfeit to any party aggrieved the sum of £100, or such less sum as the jury before whom may be tried any action to be brought for the recovery of the before-mentioned sum may consider just to be paid to such party, to be recovered by such party, with full costs of suit, by action for debt in the High Court. Nothing herein contained is to be construed to supersede any remedy or action against any returning officer according to any law now in force (*ibid.*). This section is expressly applied by the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 61 (2), to the case of every registration officer who is guilty of any wilful misfeasance or wilful act of commission or omission contrary to that Act.

So, again, by the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 76, if any sheriff, returning officer, barrister, overseer, or any person whatsoever, wilfully contravenes or disobeys the provisions of the Act, or any of them, with respect to any matter or thing which he is thereby required to do, he will for such his offence be liable to be sued in an action of debt in the High Court for the penal sum of not exceeding £500; and the defendant in such action, being convicted, must pay the sum awarded, with full costs of suit, to the party who may sue for the same. No such action is to be brought except by a person being an elector or claiming to be an elector, or a candidate, or a member actually returned, or other party aggrieved. This remedy against the returning officer is not to be construed to supersede any remedy or action against him according to the law previously in force.

(*l*) The Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 76, mentions barristers, whereas the Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 97, does not.

(*m*) See p. 257, *ante*.

(*n*) An Act for further regulating elections, stat. (1695) (7 & 8 Will. 3, c. 25),

1087. Returning officers, presiding officers, and clerks at elections are liable to similar statutory actions at the suit of persons aggrieved for wilful misfeasance in the carrying out of the ballot (*o*).

Misfeasance in carrying out ballot.

1088. No metropolitan justice of the peace or receiver or member of the metropolitan police force is allowed to canvass at an election. If he does so he is liable to a penal action at the suit of a common informer (*p*).

Metropolitan officers forbidden to canvass.

1089. Officers and persons making or procuring a false or double return may be liable to a penal action at the suit of the person duly elected (*q*), and any person making or giving any security, contract, promise, bond, or any gift or reward to procure a false or double return is liable to a penal action at the suit of a common informer (*r*).

False or double return.

But in either of these cases the information or action must be brought within the space of two years after the cause of action arises, and not after (*s*).

The clerk of the Crown must enter single and double returns of members and alterations made therein in a book; and he is liable to a penal action at the suit of the party aggrieved if he fails in his duty (*a*). The same limitation of time applies to this action (*b*).

The penal action to which any person guilty of bribery was formerly liable at the suit of a common informer (*c*) is now abolished (*d*).

The fines to which mayors, overseers, and town clerks are liable for offences relating to municipal elections are recoverable by action (*e*).

Fines for non-acceptance of office.

s. 5. The penalty is £500, to be recovered with costs by action in the High Court (*ibid.*).

(*o*) Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 11. The penalty is any sum not exceeding £100. Compare *Brittain* v. *Ritchie* (1899), 43 Sol. Jo. 532, and *Brittain* v. *Whitehorn* (1900), *Times*, 30th March, 1900. And see note (*d*) on p. 373, *ante*.

(*p*) Metropolitan Police Act, 1829 (10 Geo. 4, c. 44), s. 18. Penalty the sum of £100, half to go to the informer, and half to the Receiver of Police (*ibid.*).

(*q*) "An Act to prevent false and double returns" etc., stat. (1695) 7 & 8 Will. 3, c. 7) ss. 2, 3. The sum recoverable is double the damage sustained, with costs. See p. 332, *ante*.

(*r*) Stat. (1695) 7 & 8 Will. 3, c. 7, s. 4. The penalty is the sum of £300, one third part thereof to go to His Majesty, his heirs and successors, another third part thereof to the poor of the county, city, borough, or place concerned, and one third part thereof to the informer, with his costs, to be recovered in the High Court (*ibid.*).

(*s*) *Ibid.*, s. 6.

(*a*) *Ibid.*, s. 5.

(*b*) *Ibid.*, s. 6.

(*c*) Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 2. For form of action, see *Cooper* v. *Slade* (1858), 6 H. L. Cas. 746.

(*d*) Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), Sched. V. (repealed enactments).

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 75. If a mayor neglects or refuses to receive a parish burgess list, or a mayor or alderman neglects or refuses to conduct or declare an election as required by the Act, he will for every such offence be liable to a fine not exceeding £100, recoverable by action (*ibid.*, s. 75 (1)). If an overseer neglects or refuses to make, sign, or deliver a parish burgess list as required by the Act,

SECT. 2. Penal Actions and Injunctions.

All these fines and penalties (except where and so far as the application thereof is otherwise provided for (*f*)) go to the borough fund (*g*).

SUB-SECT. 2.—*Injunctions.*

General law.

1090. The High Court has a general jurisdiction to grant an injunction wherever it is just and convenient (*h*), that is to say, for the protection of rights or prevention of injury according to legal principles (*i*). In these respects the law relating to elections in no wise differs from the rest of the law of England (*k*).

False statements at elections.

But, in particular, the High Court has a statutory power to restrain the repetition of false statements of fact made before or during a parliamentary election for the purpose of affecting the return of any candidate, if the statement is made in relation to the personal character or conduct of such candidate (*l*).

The injunction in such case may be interim or perpetual (*m*).

For the purpose of granting an interim injunction *primâ facie* proof of the falsity of the statement is sufficient (*n*).

or if a town clerk neglects or refuses to receive, print and publish a parish burgess list or lists of claimants or respondents as required by the Act, or if an overseer or town clerk refuses to allow any such list to be inspected by a person having a right thereto, he will for every such neglect or refusal be liable to a fine not exceeding £50, recoverable by action (*ibid.*, s. 75 (2)). An action under this section does not lie after three months from the neglect or refusal. A moiety of any fine recovered therein is, after payment of the costs of action, to be paid to the plaintiff (*ibid.*, s. 75 (3)).

(*f*) See Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 224 (5), and s. 75 (3), cited in the last note.

(*g*) *Ibid.*, s. 139.

(*h*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (8). See title INJUNCTION.

(*i*) *Aslatt* v. *Southampton Corporation* (1880), 16 Ch. D. 143. This was a case in which an injunction was granted to restrain the defendants from avoiding or declaring void the office of alderman held by the plaintiff or from taking any steps for that purpose or from in any way interfering with the exercise by the plaintiff of his rights or privileges of alderman until trial or further order. This case was doubted by BRETT, L.J., in *North London Rail. Co.* v. *Great Northern Rail. Co.* (1883), 11 Q. B. D. 30, C. A., at p. 38. See, however, the judgments of COTTON, L.J., in the same case, and that of KEKEWICH, J., in *Richardson* v. *Methley School Board*, [1893] 3 Ch. 510, 515, and title INJUNCTION.

(*k*) See title INJUNCTION.

(*l*) Corrupt and Illegal Practices Prevention Act, 1895 (58 & 59 Vict. c. 40), s. 3.

(*m*) *Ibid.*

(*n*) *Ibid.*

ELECTIVE AUDITORS.

See COMPANIES; ELECTIONS; LOCAL GOVERNMENT.

ELECTRIC LIGHTING AND POWER.

PAGE

PART I. ELECTRICAL UNDERTAKINGS - - - - - 542

PART II. DEFINITIONS - - - - - - - - - 547

PART III. RECEIPTS AND EXPENDITURE OF LOCAL AUTHORITIES - - - - - - - - - - - 552

PART IV. GRANT OF PROVISIONAL ORDER - - - - 556

PART V. POWERS AND DUTIES OF UNDERTAKERS - - 560

SECT. 1. INTRODUCTORY - - - - - - - - - 560

SECT. 2. GENERAL POWERS AND OBLIGATIONS - - - - 561

SECT. 3. MORTGAGE OF UNDERTAKING - - - - - 563

SECT. 4. RESPONSIBILITY FOR NUISANCE ETC. - - - - 563

SECT. 5. AREA OF SUPPLY - - - - - - - - 566

SECT. 6. SYSTEM AND MODE OF SUPPLY - - - - - 567

SECT. 7. SECURITY FOR EXECUTION OF WORKS - - - - 567

SECT. 8. ACQUISITION OF LAND - - - - - - - 568

SECT. 9. GENERATING STATIONS - - - - - - - 570

SECT. 10. WORKS - - - - - - - - - - - 570

SECT. 11. COMPULSORY WORKS - - - - - - - - 586

SECT. 12. SUPPLY OF ELECTRICITY WITHIN THE AREA OF SUPPLY: PRICE - - - - - - - - - - - 588

SECT. 13. SUPPLY OUTSIDE AREA OF SUPPLY - - - - 595

SECT. 14. METERS - - - - - - - - - - - 596

SECT. 15. RECOVERY OF CHARGES - - - - - - - 598

SECT. 16. ACQUISITION OF UNDERTAKING BY LOCAL AUTHORITY - 600

SECT. 17. REMEDY OF DEFECTS - - - - - - - - 602

SECT. 18. REVOCATION OF POWERS - - - - - - - 603

SECT. 19. ACCOUNTS AND AUDIT - - - - - - - 604

SECT. 20. INSPECTORS; TESTING AND INSPECTION - - - 605

SECT. 21. MISCELLANEOUS - - - - - - - - - 607

Sub-sect. 1. Personal Liability of Members etc. of Local Authority - - - - - - - - - 607

Sub-sect. 2. Maps and Sections - - - - - - 607

Sub-sect. 3. Notices - - - - - - - - - 608

Sub-sect. 4. Publication of Board of Trade Regulations - 609

Sub-sect. 5. Security - - - - - - - - 609

Sub-sect. 6. Board of Trade Proceedings - - - - 609

Sub-sect. 7. Recovery of Penalties etc. - - - - 610

Sub-sect. 8. Saving Clauses - - - - - - 612

Sub-sect. 9. Injury to Undertakers' Works - - - 612

Sub-sect. 10. Stealing Electricity - - - - - 614

PART V. POWERS AND DUTIES OF UNDERTAKERS- *continued.*
SECT. 21. MISCELLANEOUS—*continued.* PAGE
Sub-sect. 11. Property in Apparatus on Consumers' Premises 614
Sub-sect. 12. Entry on Premises - - - - - 614
Sub-sect. 13. Distress and Execution - - - - 615
Sub-sect. 14. Notice of Accidents - - - - - 615
Sub-sect. 15. Arbitration - - - - - - - 615
Sub-sect. 16. Stamp Duty on Agreements for Supply of Electricity - - - - - - - 615

PART VI. METROPOLITAN UNDERTAKINGS - - - - 616

PART VII. SPECIAL LEGISLATION - - - - - - - 627
SECT. 1. POWER ACTS - - - - - - - - - 627
SECT. 2. PROVISIONAL ORDERS AND CONFIRMING ACTS - - 635
SECT. 3. LOCAL AUTHORITIES' ACTS - - - - - - 638

PART VIII. UNDERTAKINGS NOT SPECIALLY AUTHORISED- 639
SECT. 1. PRIVATE UNDERTAKINGS AND INSTALLATIONS - - 639
SECT. 2. ELECTRIC LIGHTING OF STREETS BY LOCAL AUTHORITIES UNDER GENERAL POWERS - - - - - - - 642

PART IX. MISCELLANEOUS - - - - - - - - - - 644

For Accounts - - - *See title* LOCAL GOVERNMENT; METROPOLIS.
Acquisition of Land - ,, COMPULSORY PURCHASE OF LAND ETC.
Electric Railways - - ,, TRAMWAYS AND LIGHT RAILWAYS.
Electric Telegraphs - ,, TELEGRAPHS AND TELEPHONES.
Electric Traction - - ,, RAILWAYS AND CANALS; TRAMWAYS AND LIGHT RAILWAYS.
Electric Tramways - ,, TRAMWAYS AND LIGHT RAILWAYS.
Highways - - - ,, HIGHWAYS, STREETS AND BRIDGES.
Local Areas - - - ,, LOCAL GOVERNMENT; METROPOLIS.
Local Authorities - ,, LOCAL GOVERNMENT; METROPOLIS.
Local Loans Act - - ,, LOCAL GOVERNMENT.
Measurement of Electricity - - - ,, WEIGHTS AND MEASURES.
Negligence - - - ,, NEGLIGENCE.
Nuisances - - - ,, NUISANCE.
Private Bill Procedure - ,, PARLIAMENT.
Telephones - - - ,, TELEGRAPHS AND TELEPHONES.

Part I.—Electrical Undertakings.

The Electric Lighting Acts.

1091. The main legislation relating primarily to electricity, so far as it is contained in public general statutes, is to be found in the Electric Lighting Acts, 1882, 1888, and 1909 (*a*), and the Electric

(*a*) 45 & 46 Vict. c. 56; 51 & 52 Vict. c. 12; 9 Edw. 7, c. 34. The three Acts are to be construed together as one Act; see Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), s. 5; Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 27 (2); and, under the last-cited sub-section, have the collective title of the Electric Lighting Acts, 1882 to 1909. The expression "Electric Lighting Acts" is defined in the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), s. 1, as meaning the Acts of 1882 and 1888, but, in the Act, of 1899, must now, in view of the incorporation of the Act of 1909 with those of 1882 and 1888,

Lighting (Clauses) Act, 1899 (*b*), and is concerned with statutory powers for the supply of electric energy.

Electric Lighting Act, 1882.

The Electric Lighting Act, 1882, enabled persons, companies, and certain local authorities to obtain statutory powers for the supply of electricity by means either of a licence granted by the Board of Trade, or of a Provisional Order granted by that Board and confirmed by Parliament (*c*); prescribed in general terms the nature of the provisions that might be inserted in such a licence or order (*d*); and itself directly conferred certain powers and imposed certain obligations on "undertakers"—to use the language of the Act—authorised to supply electricity either by such a licence or Order, or by a special Act passed subsequently to the Act of 1882 (*e*).

Electric Lighting Acts, 1888 and 1909.

The Act of 1882 has been amended and supplemented by the Electric Lighting Act, 1888 (*f*), and the Electric Lighting Act, 1909 (*g*); but neither of these Acts fundamentally altered the general scheme of the legislation, though the Act of 1909 has added very materially to the powers in connection with the supply of electricity which may be conferred by Provisional Order.

apparently be read as including the Act of 1909. On the other hand, in the Act of 1909, which again (by s. 25) defines the expression as meaning the Acts of 1882 and 1888, the expression must apparently be understood as excluding the Act of 1909. The slight ambiguity thus attaching to the expression is, however, of little practical importance, and has not been thought to preclude its use in the present title. The expression, it is important to observe, appears in no case to include the Act of 1899. For various forms, in connection with electrical undertakings, see Encyclopædia of Forms, Vol. XV., pp. 274 *et seq.*

(*b*) 62 & 63 Vict. c. 19.

(*c*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), ss. 3, 4.

(*d*) As to the subject-matters with which Provisional Orders under the Electric Lighting Acts may deal, see pp. 556—568, *post*.

(*e*) The Electric Lighting Act, 1882 (45 & 46 Vict. c. 56) is, by s. 2, declared to be applicable "to every local authority, company, or person who may by this Act or any licence or provisional order granted under this Act, or by any special Act to be hereafter passed, be authorised to supply electricity within any area . . . and to every undertaking so authorised, except so far as may be expressly provided by any such special Act." This enactment apparently restricts the provisions of the Act, other than those concerned with the obtaining of a licence or Provisional Order, entirely to undertakings so authorised; and the substantive sections of the Act are all individually so expressed as to be clearly so confined, with the exception of ss. 22 and 23, which deal with malicious injuries to electric works and the stealing of electricity, and might possibly be construed as of general application. Only three special Acts dealing with the supply of electricity (42 & 43 Vict. c. ccxiii. (Liverpool); 43 & 44 Vict. cc. cxxv. (Hull), cixxxx. (Burton-on-Trent) (all, as regards that subject, of limited and temporary character and no longer operative), were passed before the Act of 1882.

(*f*) 51 & 52 Vict. c. 12. S. 4 of the Act is concerned with electric lines and works not laid down or erected under statutory powers, and thus stands apart from the legislation under consideration. The other sections of the Act relate by their terms exclusively to statutory powers for the supply of electricity.

(*g*) 9 Edw. 7, c. 34. The sections of the Act all relate by their terms exclusively to statutory powers for the supply of electricity, except s. 23, which prohibits unauthorised undertakers from competing with authorised undertakers (see p. 562, *post*), and s. 19, which relates to stamp duty on contracts for the sale of electricity, and which, notwithstanding the provisions of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 2, cited in note (*e*), *supra*, and the incorporation of the Act of 1909 with that of 1882 (see note (*a*), p. 542, *ante*), might possibly be construed as of general application.

PART I. Electrical Undertakings.

Licences.

1092. The method of obtaining powers for the supply of electricity by licence has not proved satisfactory, and the present policy of the Board of Trade is to refuse to grant a licence save in most exceptional circumstances, and then only as a temporary expedient upon an undertaking by the promoters to apply for a Provisional Order (*h*). As the granting of licences authorising the supply of electricity has fallen into desuetude, there are two ways only in which powers for the purpose are practically obtained, namely, by Provisional Order and by special Act.

Provisional Orders.

1093. The great majority of electrical undertakings are carried on under Provisional Orders (*i*).

Up to the year 1899 inclusive, the Provisional Orders were of elaborate character, each being complete in itself, though framed in great measure upon stock lines.

Electric Lighting (Clauses) Act, 1899.

The Electric Lighting (Clauses) Act, 1899 (*k*), however, contains in a schedule, which has been amended in a few points of detail by the Electric Lighting Act, 1909 (*l*), a series of sections embodying in a generalised form the provisions which had before that Act been usually inserted in Provisional Orders. And, except in the case of metropolitan undertakings, the typical Provisional Order has since been a short document incorporating (with the merely formal exception of sections relating to Scotch and Irish undertakings) the schedule to the Act of 1899, and itself containing only a few simple provisions.

Application of Act of 1899.

The Act of 1899 does not apply to the county of London, except so far as any provisions in the schedule are incorporated with any Provisional Order under the Electric Lighting Acts extending to that county or with any special Act so extending (*m*). Subject to this exception, the provisions in the schedule to the Act are incorporated with and form part of every Provisional Order made by the Board of Trade after 1st October, 1899 (*n*), save so far as they are expressly varied or excepted by the Order, and, subject to any such variations or exceptions, apply, so far as applicable, to the undertaking authorised by the Order, and they are incorporated also, with the necessary modifications, and in particular with the substitution of the words "special Act" for "special Order," with any "special Act" within the meaning of the Act of 1899, *i.e.*, any Act passed after 1st October, 1899 (*n*), authorising the supply of electricity for any public or private purposes within any area (*o*).

(*h*) As to the conditions under which a licence may be granted, the matters for which it may provide, and the procedure in relation to an application for a licence, see the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), ss. 3, 5, 6, and the Rules of the Board of Trade (as to which see p. 559, *post*) made under s. 5 of that Act.

(*i*) The Electric Lighting Orders Confirmation Acts, by which the Orders are confirmed, with schedules setting out the Orders confirmed, are printed among the local Acts.

(*k*) 62 & 63 Vict. c. 19.

(*l*) 9 Edw. 7, c. 34, ss. 10, 11. See pp. 594, 596, 597, *post*.

(*m*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), s. 2 (2). For metropolitan legislation applying provisions in the schedule to the Act in London, see pp. 618, 620, *post*.

(*n*) The date of the commencement of the Act; see *ibid.*, s. 2 (3).

(*o*) *Ibid.*, s. 1. This section would apparently itself effect the incorporation

Board of Trade regulations.

1094. The Board of Trade have power, in the case of an authorised undertaking, to make, and vary or repeal, regulations for securing the safety of the public from personal injury, or from fire or otherwise, and from time to time to amend or repeal any regulations contained in the licence, Order, or special Act in relation thereto; and any regulations so made have, from and after the date thereof, the like effect as if originally inserted in the licence, Order, or special Act. Every regulation so repealed is, from and after the date thereof, to stand repealed, subject to a saving for liabilities or penalties incurred (*p*). The Board have power also, in the case of most undertakings, to issue regulations for insuring a proper and sufficient supply of electricity by the undertakers (*q*).

Under these powers the Board issue, in the case of each undertaking, a set of Board of Trade regulations, comprising, in normal cases, besides a general definition clause, two series of regulations headed respectively, "(A) Regulations for securing the safety of the public"; and "(B) Regulations for ensuring a proper and sufficient supply of electrical energy." For this purpose the Board issue certain sets of model regulations adapted to the various cases (*r*).

(except possibly in the case of a Provisional Order made under powers conferred exclusively by the Electric Lighting Act, 1909 (9 Edw. 7, c. 34)) if the Provisional Order or special Act were silent on the point; but the practice is to insert express provisions with regard to the incorporation of the schedule in the Provisional Order or special Act.

(*p*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 6. The enactment of which the effect is stated in the text is enacted by way of a proviso on the earlier part of the section, which enacts that the undertakers shall be subject to such "regulations and conditions" as may be inserted in the licence, Order, or special Act with regard, *inter alia*, to "the securing the safety of the public from personal injury, or from fire or otherwise." The jurisdiction of the Board to repeal provisions as to public safety contained in a Provisional Order or Act has never been exercised; indeed, it is not the practice to insert in a Provisional Order or special Act provisions regarded by the Board as falling within the category of provisions for securing the safety of the public, so that occasion for the exercise of the jurisdiction does not arise.

(*q*) Where the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), applies, the power of the Board to issue such regulations arises thus: The expression "Board of Trade regulations" is defined in s. 1 of the schedule as meaning, shortly, regulations made by the Board in relation to the undertaking "for securing the safety of the public or for insuring a proper and sufficient supply of energy" (see p. 551, *post*, where the definition is given in full); and by s. 10 of the schedule energy is only to be supplied "subject to the Board of Trade regulations." And similar legislation is to be found in Provisional Orders (other than those confirmed in 1883), and frequently in special Acts, where the schedule to the Act of 1899 does not apply. The Provisional Orders confirmed in 1883, however, themselves (as seems to have been the original intention of the legislature: see Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 6) comprise clauses dealing with the subject, and give the Board only subordinate powers for dealing with it by regulation.

(*r*) Six model series are at present in use. One of these, prepared in 1909, is applicable to the few undertakings still carried on under Provisional Orders of 1883; it differs in substance from the four next mentioned only as regards the regulations under head B. Four others, also prepared in 1909, and differing from each other in *minutiæ* only, are applicable (to undertakings other than those under Orders of 1883) in the cases respectively where the undertakers are a provincial company, a London company, a provincial local authority, and a London local authority. The sixth series, prepared in 1906, is applied only to undertakings in which electricity is supplied or distributed at extra high

PART I. Electrical Undertakings.

Power of local authorities to make bye-laws.

1095. Local authorities within the meaning of the Electric Lighting Acts are empowered to make bye-laws, requiring confirmation by the Board of Trade, in addition to the Board of Trade regulations, for further securing the safety of the public, in relation to authorised undertakings (*s*), but this power has never been exercised.

Summary of sources of undertakers' powers and duties.

1096. The main powers and obligations of undertakers authorised by Provisional Order or special Act to supply electricity are to be sought (*t*)—

(1) In the Electric Lighting Acts, 1882 to 1909 (*u*);

(2) In the Provisional Order and the Act confirming it (*v*), or in the

pressure. The series of 1909 have been applied, not only to undertakings authorised since they were prepared, but also, it is believed, to all undertakings previously authorised. The Board occasionally, however, though rarely, modify the regulations to meet the exigencies of a particular undertaking. All the series contain saving clauses for the power of the Board to make further regulations, and for the full operation of the undertakers' Provisional Order or special Act.

The observance of the regulations is secured by penalties imposed by the regulations, subject, in the case of the regulations for securing the safety of the public, to a saving to the effect that the recovery of the penalty shall not affect the undertakers' liability to make compensation in respect of any damage or injury caused by reason of the default. The saving is no doubt intended to preserve the undertakers' liability in tort, though for this purpose it is perhaps superfluous.

Among other precautions the regulations require the earthing in many cases of metallic tubes containing wires etc. In *Re Fulham Borough Council and National Electric Construction Co., Ltd.* (1905), 70 J. P. 55, a clause in a contract for fitting electric wires etc. in certain premises, which provided for the earthing of tubes of the kind except where "not desirable," but appeared to have been inserted in the contract with a view to the prevention of risk from fire, was held not to be broken by the omission to earth tubes, where the earthing, though desirable in the interests of the safety of those resorting to the premises, would not have been desirable so far as risk from fire was concerned.

(*s*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 6.

(*t*) As to the application of the legislation, see pp. 543, 544, *ante;* and as to the Board of Trade regulations, see p. 545, *ante.*

Although the Electric Lighting Acts, 1882 to 1909 (45 & 46 Vict. c. 56; 51 & 52 Vict. c. 12; 9 Edw. 7, c. 34), do not contemplate that Provisional Orders made under them shall contain enactments inconsistent with those in the Acts themselves, there are some clauses in the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), and also in Provisional Orders not incorporating that schedule, which seem, in fact, difficult to reconcile with provisions in the Acts. The interpretation of such clauses is difficult; for, although a Provisional Order confirmed by Parliament has in all respects the force of an Act of Parliament, the application of the maxim *leges posteriores priores contrarias abrogant* (as to which see title STATUTES) is generally complicated by the enactment in s. 1 of the schedule to the Act of 1899, that "the provisions of this schedule are to be read and construed subject in all respects to the provisions of the Electric Lighting Acts, and of any other Acts or parts of Acts incorporated therewith," or (where the Provisional Order does not incorporate the schedule to the Act of 1899) by a like enactment in the Provisional Order. There is no similar difficulty with regard to special Acts, which it is contemplated will, and which frequently do, expressly vary the Acts in relation to particular undertakings.

(*u*) 45 & 46 Vict. c. 56; 51 & 52 Vict. c. 12; 9 Edw. 7, c. 34.

(*v*) The insertion of substantive provisions in Acts confirming Provisional Orders, though formerly exceptional, has latterly become common. As to the most usual subject-matters for such clauses, see p. 638, *post.*

special Act (*a*), as the case may be, and the amending Orders and Acts (*b*), if any;

(3) In the case of recent Provisional Orders and special Acts not confined to the metropolis, in the incorporated provisions of the schedule to the Electric Lighting (Clauses) Act, 1899 (*c*); and

(4) In the Board of Trade regulations applicable to the undertaking.

Enactments specially affecting an undertaking are also frequently to be found in local Acts passed at the instance of local authorities (*d*), and in the Acts and Orders authorising other electrical undertakings in the locality or its neighbourhood (*e*).

Metropolitan undertakings are also subject to important legislation contained in local Acts applicable to the metropolis generally (*f*).

Part. II.—Definitions.

Definitions in Act of 1882.

1097. The Electric Lighting Act, 1882, contains several important definitions of expressions used in that Act, and these definitions apply also to the interpretation of the Electric Lighting Acts, 1888 and 1909 (*g*), and, subject to the special definitions contained in that schedule, to the interpretation of the schedule to the Electric Lighting (Clauses) Act, 1899 (*h*).

The general definitions in the Act of 1882 are these :—

"Public purposes."

"Public purposes" means lighting any street or any place belonging to or subject to the control of the local authority, or any church or registered place of public worship, or any hall or building belonging to or subject to the control of any public authority, or any public theatre; but does not include any other purpose to which electricity may be applied.

"Private purposes."

"Private purposes" includes any purposes whatever to which electricity may for the time being be applicable, not being public purposes, except the transmission of any telegram (*i*).

(*a*) For some account of certain usual types of special Act, see pp. 627—635, *post*.

(*b*) The Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 4 (4), expressly authorises the amendment of an Act confirming a Provisional Order (which practically means that the Provisional Order may be amended) by a subsequent Provisional Order granted on the application of the undertakers, and duly confirmed.

(*c*) 62 & 63 Vict. c. 19.

(*d*) Clauses in omnibus Acts of local authorities dealing with undertakings carried on by those authorities under Provisional Orders are very numerous. As to some of the most usual subject-matters for such clauses, see pp. 638, 639, *post*.

(*e*) Particularly as regards arrangements for the supply of electricity in bulk, and the transfer of undertakings from one body of undertakers to another. See pp. 630—632, 634, 639, *post*.

(*f*) See pp. 616—626, *post*.

(*g*) 51 & 52 Vict. c. 12, s. 5; 9 Edw. 7, c. 34, s. 27 (2) (whereby the Acts of 1888 and 1909 are to be construed as one with the Act of 1882).

(*h*) 62 & 63 Vict. c. 19, schedule, s. 1.

(*i*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 3 (3), (4). These

PART II. Definitions.

"Local authority." "Local rate."

"Local authority" and "local rate" are defined in the Electric Lighting Act, 1882 (*k*), by reference to a schedule tabulating the local authorities for various areas, with their respective local rates (*l*), and containing also certain particulars as to borrowing powers and audit (*m*). Later legislation has, however, much modified the effect of the table, and rendered it in part obsolete. The "local authorities" for the purposes of the Electric Lighting Acts are now as follows:—

List of local authorities.

(1) In the City of London and the liberties thereof, the Corporation (*n*);

(2) In the parts of the metropolis which the London County Council are authorised to light, that Council (*o*);

(3) In metropolitan boroughs, the metropolitan borough council (*p*);

(4) In urban districts (including boroughs whether county boroughs or not), the urban authority, *i.e.*, in the case of a borough the corporation acting by the council, and in non-municipal urban districts the district council (*q*);

(5) In rural districts, the rural district council (*r*).

"Electricity."

"Electricity" means electricity, electric current, or any like agency (*s*).

"Electric line."

"Electric line" means a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity with any casing, coating, covering, tube, pipe, or insulator inclosing, surrounding, or supporting the same, or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, or distributing electricity or electric currents.

"Works."

"Works" means and includes electric lines, and also any buildings, machinery, engines, works, matters, or things of whatever description required to supply electricity and to carry into effect the object of the undertakers under the Electric Lighting Act, 1882.

definitions are not expressed to be subject to the context. As to the meaning of telegram, see p. 549, *post*.

(*k*) 45 & 46 Vict. c. 56, s. 31, schedule. The definitions are expressed to apply unless the context otherwise requires.

(*l*) See pp. 552, 553, *post*.

(*m*) See pp. 553, 554, *post*.

(*n*) As successors of the City of London Commissioners of Sewers; see City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii.), s. 5.

(*o*) As successors of the Metropolitan Board of Works; see Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40.

(*p*) As successors of the administrative vestries and district boards; see London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4.

(*q*) See Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 5, 6; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 21. The only borough which is not now an urban district under the jurisdiction of the corporation as urban authority is Folkestone. See title LOCAL GOVERNMENT.

(*r*) As successors of the rural sanitary authorities. See Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 24, 25.

(*s*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 32. In the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), Provisional Orders, the Board of Trade regulations etc., the expression "energy" (for the definition of which in the Act of 1899 see p. 550, *post*) or "electrical energy" is used in preference to electricity, having doubtless been deemed more scientific.

PART II. Definitions.

"Company" means any body of persons corporate or unincorporate. "Company."

"Lands Clauses Acts" is defined as meaning the Lands Clauses Consolidation Acts, 1845, 1860, and 1869 (*t*). To these the Lands Clauses (Umpire) Act, 1883 (*a*), and the Lands Clauses (Taxation of Costs) Act, 1895 (*b*), must now be added. "Lands Clauses Acts."

"Street" includes any square, court, alley, highway, lane, road, thoroughfare, or public passage, or place, within the area in which the undertakers are authorised to supply electricity by the Electric Lighting Act, 1882, or by any licence, Order, or special Act (*c*). "Street."

"Telegram" has the same meaning as in the Telegraph Act, 1869 (*d*). "Telegram."

The definitions of "electricity," "electric line," "works," "company," "Lands Clauses Acts," "street" and "telegram" (*e*) are expressed to apply unless the context otherwise requires (*f*). Definitions subject to context.

"The undertakers" is in effect defined as meaning a local authority, company, or person authorised by the Electric Lighting Act, 1882, or by any Provisional Order or licence granted under that Act, or by any special Act passed after that Act to supply electricity in any area. "The undertakers."

And the expression "licence, Order, or special Act" is defined as including every such licence, Order, or special Act (*g*). "Licence, Order, or special Act."

1098. The Electric Lighting (Clauses) Act, 1899 (*h*), defines the "Electric Lighting Acts" as meaning the Electric Lighting Acts, 1882 and 1888 (*i*); but the expression must now apparently be construed as including also the Electric Lighting Act, 1909 (*j*). Definitions in Act of 1899. "Electric Lighting Acts."

And the schedule to the Act of 1899 (*k*), after in effect defining "principal Act" as meaning collectively the Electric Lighting Acts and the Acts and parts of Acts incorporated therewith (*l*), provides "Principal Act."

(*t*) 8 & 9 Vict. c. 18; 23 & 24 Vict. c. 106; 32 & 33 Vict. c. 18.

(*a*) 46 & 47 Vict. c. 15.

(*b*) 58 & 59 Vict. c. 11.

(*c*) This definition is practically identical with those in the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 3, and the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 3; and there are more or less similar definitions in many other Acts, *e.g.*, the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 4, and the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 250. For the numerous cases decided on such definitions generally, see title HIGHWAYS, STREETS AND BRIDGES. In *Maddock* v. *Wallasey Local Board* (1886), 55 L. J. (Q. B.) 267, an open tract of seashore between high-water mark and inclosed land was held not to be a street for the purposes of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15).

(*d*) 32 & 33 Vict. c. 73, s. 3. See title TELEGRAPHS AND TELEPHONES. The expression includes a telephone message (*A.-G.* v. *Edison Telephone Co. of London, Ltd.* (1880), 6 Q. B. D. 244).

(*e*) Contained in the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 32.

(*f*) *Ibid.*

(*g*) *Ibid.*, s. 2.

(*h*) 62 & 63 Vict. c. 19, s. 1.

(*i*) 45 & 46 Vict. c. 56; 51 & 52 Vict. c. 12.

(*j*) 9 Edw. 7, c. 34. See note (*a*), p. 542, *ante*.

(*k*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, 1.

(*l*) The enactments incorporated with the Electric Lighting Acts are the Lands Clauses Acts (see p. 568, *post*) and certain clauses of the Gasworks

PART II. Definitions.

that the several words, terms, and expressions to which by the principal Act meanings are assigned shall, in the schedule, have the same respective meanings, subject to the following special definitions:—

"Special Order." "Special Order" means any Provisional Order made by the Board of Trade under the principal Act with which the provisions of the schedule are incorporated, and includes those provisions as so incorporated (*m*).

"Energy." "Energy" means electrical energy, and for the purposes of applying the provisions of the principal Act to the special Order electrical energy is to be deemed to be an agency within the meaning of "electricity" as defined in the Electric Lighting Act, 1882 (*n*).

"Power." "Power" means electrical power or the rate per unit of time at which energy is supplied.

"Main." "Main" means any electric line which may be laid down by the undertakers in any street or public place, and through which energy may be supplied or intended to be supplied by the undertakers for the purposes of general supply.

"Service line." "Service line" means any electric line through which energy may be supplied or intended to be supplied by the undertakers to a consumer either from any main or directly from the premises of the undertakers.

"Distributing main." "Distributing main" means the portion of any main which is used for the purpose of giving origin to service lines for the purposes of general supply.

"General supply." "General supply" means the general supply of energy to ordinary consumers, and includes, unless otherwise specially agreed with the local authority, the general supply of energy to the public lamps, where the local authority are not themselves the undertakers, but does not include the supply of energy to any one or more particular customers under special agreement (*o*).

"Area of supply." "Area of supply" means the area within which the undertakers are, for the time being, authorised to supply energy under the special Order.

"County council." "County council" means the county council of the county in which the area of supply is situated.

"Consumer." "Consumer" means any body or person supplied or entitled to be supplied with energy by the undertakers.

"Consumer's terminals." "Consumer's terminals" means the ends of the electric lines

Clauses Acts, 1847 and 1871 (10 & 11 Vict. c. 15; 34 & 35 Vict. c. 41). See note (*k*), p. 573, *post*.

(*m*) The schedule to the Act of 1899 may be incorporated with a Provisional Order or special Act either in whole or in part. Hence references in it to provisions of the "special Order" may in the case of one undertaking have to be interpreted as references to provisions in the schedule itself, while in the case of another undertaking they may have to be interpreted as references to provisions in the Provisional Order or special Act.

(*n*) For the definition of "electricity" in the Act of 1882 (45 & 46 Vict. c. 56), s. 32, see p. 548, *ante*. There seems, in the present state of knowledge, to be no difference for practical purposes in meaning between "electricity" as used in the Act of 1882 and "energy" as used in the Act of 1899.

(*o*) "Ordinary consumer" and "special agreement" are not defined. See p. 588, *post*.

situate upon any consumer's premises, and belonging to him, at which the supply is delivered from the service lines.

"Telegraphic line," when used with respect to any telegraphic line of the Postmaster-General, has the same meaning as in the Telegraph Act, 1878 (*p*), and any such telegraphic line is to be deemed to be injuriously affected where telegraphic communication by means of that line is, whether through induction or otherwise, in any manner affected. "Telegraphic line."

"Railway" includes any tramroad, that is to say any tramway other than a tramway as defined by the ensuing definition. "Railway."

"Tramway" means any tramway laid along any street. "Tramway."

A light railway constructed under the Light Railways Act, 1896 (*q*), would appear to be a "railway" and not a "tramway" for the purposes of these definitions, even though laid in a street and physically indistinguishable from an ordinary tramway (*r*).

"Daily penalty" means a penalty for each day on which any offence is continued after conviction therefor. "Daily penalty."

"Board of Trade regulations" means any regulations or conditions affecting the undertaking made by the Board of Trade under the principal Act or the special Order, for securing the safety of the public or for insuring a proper and sufficient supply of energy (*s*). "Board of Trade regulations."

"Deposited map" means the map of the area of supply deposited at the Board of Trade by the undertakers together with the special Order, and signed by an assistant secretary to the Board of Trade (*t*). "Deposited map."

"Plan" means a plan drawn to a horizontal scale of at least one inch to eighty-eight feet, and where possible a section drawn to the same horizontal scale as the plan and to a vertical scale of at least one inch to eleven feet, or to such other scale as the Board of Trade may approve of for both plan and section, together with such detail plan and sections as may be necessary. "Plan."

Besides containing the foregoing definitions (*a*), the schedule to the Electric Lighting (Clauses) Act, 1899, in effect defines the expression "the undertakers" as meaning the authority, company, or other person named for that purpose in the special Order, subject, however, to a provision that if (where the undertakers are not the local authority) the undertaking or any part of it is at any time purchased by the local authority in accordance with the special Order or the principal Act, the local authority shall from the date on which the purchase takes effect be the undertakers in relation to "The undertakers."

(*p*) 41 & 42 Vict. c. 76, s. 2. See title TELEGRAPHS AND TELEPHONES.

(*q*) 59 & 60 Vict. c. 48. See title TRAMWAYS AND LIGHT RAILWAYS.

(*r*) See *Wakefield Corporation* v. *Wakefield and District Light Railway Co.*, [1908] A. C. 293; *A.-G.* v. *Yorkshire (Woollen District) Electric Tramways, Ltd.*, [1907] 2 K. B. 991. Compare *Thornton Urban Council v. Blackpool and Fleetwood Tramroad Co.*, [1909] A. C. 264.

(*s*) See p. 545, *ante*.

(*t*) The deposit of such a map is required by the Rules of the Board of Trade (referred to p. 559, *post*) made under the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 5.

(*a*) All of which are contained in s. 1 of the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19).

PART II. Definitions.

the undertaking or part thereof for the purposes of the special Order in lieu of the persons named therein as undertakers (*b*).

Definitions in Act of 1909.

1099. The Electric Lighting Act, 1909 (*c*), contains the following general definitions, all expressed to apply unless the context otherwise requires:—

"Provisional Order."

"Provisional Order" means a Provisional Order under the Electric Lighting Acts.

"Electric Lighting Acts."

"Electric Lighting Acts" means, as regards England, the Electric Lighting Acts, 1882 and 1888 (*d*).

"Authorised."

"Authorised" means authorised by Act of Parliament or Provisional Order.

"Area of supply."

"Area of supply" means any area within which any local authority, company, or person is authorised to supply electricity.

"Undertakers."

"Undertakers" means any local authority, company, or person authorised to supply electricity to whom the Electric Lighting Acts apply.

"Road."

"Road" includes any street as defined by the Electric Lighting Act, 1882 (*e*).

"Generating station."

"Generating station" includes any station for generating, transforming, converting, or distributing electricity.

"To supply electricity in bulk."

"To supply electricity in bulk" means to supply electricity—(a) to any local authority, company, or person authorised to distribute electricity to be used for the purposes of distribution; or (b) to any local authority authorised by any general or special Act to undertake or contract for the lighting of streets, bridges, or public places, to be used for the purposes of lighting streets, bridges, and public places.

Part III.—Receipts and Expenditure of Local Authorities.

Expenses of local authorities.

1100. Expenses incurred by a local authority under the Electric Lighting Acts, and not otherwise provided for, including expenses in connection with obtaining, or opposing the obtaining of, a licence, Order, or special Act under the Acts, may be defrayed out of the "local rate"; and the local authority may cause the necessary rates to be levied (*f*).

The "local rate."

The "local rates" of the various local authorities are at the present time the following (*g*):—

In the case of the Corporation of the City of London, the general rate (*h*).

(*b*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 2.
(*c*) 9 Edw. 7, c. 34, s. 25.
(*d*) 45 & 46 Vict. c. 56; 51 & 52 Vict. c. 12. *See* note (*a*), p. 542, *ante*.
(*e*) *See* p. 549, *ante*.
(*f*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 7,
(*g*) See *ibid.*, s. 31, schedule. And see p. 548, *ante*, where the definition of "local rate" is referred to.
(*h*) See City of London (Union of Parishes) Act, 1907 (7 Edw. 7, c. cxl.), s. 15.

In the case of the London County Council, the county rate (*i*).

In the case of a metropolitan borough council, the general rate (*k*).

In the case of an urban authority, the fund or rate applicable to the general purposes of the Public Health Act, 1875 (*i.e.*, usually the general district rate), in the district, or any other fund or rate applicable to lighting under any local Act (*l*).

In the case of a rural district council, the rate or rates out of which special expenses in respect of the contributory place or places comprised within the area of supply are payable under the Public Health Act, 1875, *i.e.*, what is called the special sanitary rate, though in the case of small amounts sometimes the poor rate or a like rate (*m*).

Borrowing powers of local authorities.

1101. Local authorities authorised to supply electricity by licence, Order, or special Act, have the following borrowing powers under the Electric Lighting Act, 1882 (*n*).

(1) A metropolitan borough council may borrow with the consent of the London County Council (or of the Local Government Board on appeal from that council (*o*)), subject to the provisions and restrictions with respect to borrowing and the repayment of loans contained in ss. 183 to 191 (both inclusive) of the Metropolis Management Act, 1855 (*p*), on the security of the local rate.

(2) An urban authority may borrow with the consent of the Local Government Board, subject to the provisions and restrictions with respect to borrowing and repayment of loans contained in ss. 233, 234, and 236 to 239 (both inclusive) of the Public Health Act, 1875 (*q*), on the security of the local rate and any property of the authority.

(3) A rural district council may borrow with the consent of the Local Government Board, subject to the provisions and restrictions with respect to borrowing and repayment of loans contained in

(*i*) See Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 40, 68.

(*k*) See London Government Act, 1899 (62 & 63 Vict. c. 14), ss. 4, 10. And see the London (Rating) Scheme, 1901, made under the last cited Act (Statutory Rules and Orders Revised, Vol. VIII., London County, p. 84). Formerly when the administrative vestries and district boards were the local authorities under the Electric Lighting Acts their expenses as such were, under the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), ss. 7, 31, and schedule, defrayed out of the lighting rate or other fund or rate applicable to lighting; and this circumstance is still of importance in connection with the preservation of existing exemptions from lighting rate under s. 10 of the London Government Act, 1899 (62 & 63 Vict. c. 14), and the scheme above cited. See titles METROPOLIS; RATES AND RATING.

(*l*) See Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 207, 208. And see titles LOCAL GOVERNMENT; RATES AND RATING.

(*m*) See Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 229, 230; Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 25, 29. And see titles LOCAL GOVERNMENT; RATES AND RATING.

(*n*) 45 & 46 Vict. c. 56, s. 8, schedule. The borrowing powers conferred by s. 8 do not extend to the Corporation of the City of London or the London County Council.

(*o*) London Government Act, 1899 (62 & 63 Vict. c. 14), s. 4 (1).

(*p*) 18 & 19 Vict. c. 120. As to the borrowing powers of metropolitan borough councils, see title METROPOLIS.

(*q*) 38 & 39 Vict. c. 55. As to the borrowing of money under this Act, see title LOCAL GOVERNMENT.

PART III. Receipts and Expenditure of Local Authorities.

ss. 233, 234, and 236 to 239 (both inclusive) of the Public Health Act, 1875 (*r*), on the security of the local rate.

Money so borrowed is to be deemed to be borrowed under the enactments subject to the provisions and restrictions of which it is borrowed (*s*).

Borrowing under Local Loans Act.

As an alternative, moneys borrowed by a local authority under the above-mentioned powers of the Electric Lighting Act, 1882, may be borrowed in the manner provided by the Local Loans Act, 1875 (*t*), and in construing that Act for this purpose "prescribed" means prescribed by the authority whose consent is required to the borrowing, *i.e.*, the Local Government Board or the London County Council, as the case may be (*u*).

Borrowing by issue of stock.

1102. As a further alternative, where any authority is authorised by any Act to raise money which they may be empowered to borrow for certain purposes by the issue of corporation or other stock, any money which they may be authorised to borrow under the above-mentioned powers of the Electric Lighting Act, 1882, may be raised by the issue of such stock (*u*).

Limitations on borrowing not to apply.

1103. Money borrowed under the Electric Lighting Acts is not to be reckoned as part of the total debt of a local authority for the purpose of any limitation on borrowing under the enactments relating to borrowing by the local authority (*v*).

Borrowing for purchase of undertaking.

1104. The borrowing powers conferred on local authorities by the Electric Lighting Act, 1882, are expressed to apply only where the local authority are authorised to supply electricity (*w*), and it is accordingly very doubtful whether they extend to borrowing for the purchase of an existing undertaking (*x*).

Accounts of local authorities.

1105. The accounts of local authorities in relation to receipts and expenditure under the Electric Lighting Acts, or any licence, Order, or special Act, are subject to audit like their other accounts (*a*).

(*r*) 38 & 39 Vict. c. 55; see note (*q*), p. 553, *ante*.

(*s*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 8; but see the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 21.

(*t*) 38 & 39 Vict. c. 83.

(*u*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 8. The alternative method of borrowing under the Local Loans Act is expressed to be given to the local authority of any district to whose district that Act extends. But the Act appears to apply to all local authorities within the meaning of the Act of 1882. As to the Local Loans Act generally, see title LOCAL GOVERNMENT.

(*v*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 21.

(*w*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 8.

(*x*) For an instance in which difficulties occurred as to borrowing by a local authority for the purchase of an existing undertaking, which they were required to purchase by an Act confirming a Provisional Order, but conferring no special borrowing powers on the authority, see *Metropolitan Electric Supply Co., Ltd.* v. *St. Marylebone Corporation* (1903), 67 J. P. 382; and see, for further proceedings in the case (1904), 2 L. G. R. 419. The authority were subsequently given the necessary borrowing power by special Act (4 Edw. 7, c. xli.).

(*a*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 8, schedule; Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 246, 247; Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 25, 27, 242; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 71; Local Government Act, 1894 (56 & 57 Vict. c. 73),

1106. The Electric Lighting Acts do not themselves provide for the application of the receipts of the local authority. Provisions to the following effect, for the application of the receipts of a local authority where they are the undertakers, are, however, contained in the schedule to the Electric Lighting (Clauses) Act, 1899 (*b*):—

Application of receipts of local authorities.

All receipts of the local authority, except borrowed money, money arising from the disposal of lands, and other capital money, are to be applied by them—

In payment of certain current expenses, including working and establishment expenses and cost of maintenance. Income.

In payment of the interest on money borrowed for electricity purposes.

In providing instalments or sinking fund in respect of moneys borrowed for electricity purposes.

In payment of all other expenses of executing the special Order, not being expenses properly chargeable to capital.

In providing a reserve fund, if the local authority think fit, by setting aside such money as they think reasonable, duly investing it, and accumulating it at compound interest, until the fund amounts to one-tenth of the aggregate capital expenditure on the undertaking. Reserve fund.

The reserve fund is applicable to answer deficiencies in income, or to meet extraordinary claims or demands; and if the fund is reduced it may be again restored to the prescribed limit.

The net surplus remaining in any year and the annual proceeds of the reserve fund when amounting to the prescribed limit, are to be carried to the credit of the local rate, or, at the option of the local authority, to be applied to the improvement of their district, or in reduction of the capital borrowed for electricity purposes. Application of net surplus.

If, however, the surplus in any year exceeds 5 per cent. per annum upon the aggregate capital expenditure on the undertaking, the local authority must make reductions in their charges which will in their judgment reduce the surplus to that maximum rate of profit (*c*). Reductions in charges.

A deficiency of income in any year not answered out of the reserve fund is payable out of the local rate. Deficiency of income.

Moneys arising from the disposal of lands and other capital moneys received by the local authority in respect of the undertaking are to be applied in reduction of the capital moneys borrowed for (1) electricity purposes, and (2) other than electricity purposes. Receipts on capital account.

s. 58; London Government Act, 1899 (62 & 63 Vict. c. 14), s. 14. See titles LOCAL GOVERNMENT; METROPOLIS.

(*b*) 62 & 63 Vict. c. 19, schedule, s. 7. Similar provisions in the Provisional Order or special Act are generally applicable where the Act of 1899 does not apply.

(*c*) See, however, note (*f*), p. 594, *post*.

PART IV.
Grant of Provisional Order.

Part IV.—Grant of Provisional Order.

Subject-matters for Provisional Order.

Supply of electricity.

1107. The powers of the Board of Trade to grant Provisional Orders conferring powers for the supply of electricity and incidental purposes are as follows:—

The Board may by Provisional Order authorise any local authority, company, or person (*d*) to supply electricity for any public or private purposes, within any area (*e*), and for such period, whether limited or unlimited (*f*), as the Board think proper (*g*).

Joint exercise of powers of local authorities.

The Board may, with the concurrence of the Local Government Board, by Provisional Order, make provisions, by the constitution of a joint committee or joint board, or otherwise, for the joint exercise of powers under the Electric Lighting Acts, 1882 to 1909, or any Provisional Order, by two or more local authorities, as respects any area of supply consisting of the whole or parts of the districts of those authorities; and any such Provisional Order may contain provisions adapting the Acts or any such Provisional Order (*h*) to the case of any committee or board so constituted (*i*).

(*d*) It is the practice of the Board when they grant a Provisional Order to an individual or individuals to insert in it clauses making the exercise of its powers conditional upon their transfer to other undertakers. See p. 636, *post*.

(*e*) By the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 3 (7), as applied by *ibid.*, s. 4, the grant of a Provisional Order to a local authority to supply electricity within any area, though the same or some part thereof is not within their own district, is expressly authorised; and Orders authorising a local authority to supply an outside area are often granted.

(*f*) Provisional Orders are never granted for limited periods.

(*g*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 4. A Provisional Order under this section may, by *ibid.*, s. 3 (8), (9), as applied by s. 4, make such regulations as to the limits within which and the conditions under which a supply of electricity is to be compulsory or permissive, and for enforcing the performance of the undertakers' duties in relation to the supply, and for the revocation of the Provisional Order on the undertakers' failure to perform such duties, and generally may contain such regulations and conditions as the Board of Trade think expedient, and, in the case of undertakers other than the local authority, it may contain provisions for specified purposes in connection with the breaking up of streets repairable by the local authority, and the alteration of the position of pipes and wires other than those of the undertakers under such streets. And the subject-matters for which it is contemplated that such a Provisional Order may provide are further indicated by *ibid.*, s. 6, whereby the undertakers are to be subject to such regulations and conditions as may be inserted in any licence, Order, or special Act with regard, putting it shortly, to (a) the limits within and the conditions under which the supply is to be compulsory or permissive; (b) securing a regular and efficient supply; (c) securing the safety of the public; (d) limitation of prices; (e) authorising inspection and inquiry by the Board of Trade and the local authority; (f) the enforcement of the performance of the undertakers' duties by penalties or otherwise, and the revocation of the licence, Order, or special Act on the failure of the undertakers to exercise their powers; and (g) other matters. Provisions on all the subject-matters of s. 6, except those in heads (b) and (c), are contained in the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), and will be found in Provisional Orders not incorporating that schedule. It has never been the practice to insert provisions under head (c), nor since 1883 under head (b), in Provisional Orders; these matters are left to be dealt with by the Board of Trade regulations; see note (*q*) p. 545, *ante*.

(*h*) *I.e.*, apparently, any existing Provisional Order the joint exercise of powers under which is in question.

(*i*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 8. A joint board for the

PART IV. Grant of Provisional Order.

The Board may by Provisional Order authorise any local authority, company, or person, who is authorised by the same or any previous Provisional Order, or by Act of Parliament, to supply electricity in any area, to acquire compulsorily, or to use, for the purpose of a generating station, any land specified in the Order, whether situated within or without the area of supply, and, in the case of a local authority, whether situated within or without their district (*k*). And for the purpose of the acquisition of land authorised to be taken compulsorily under such a Provisional Order, the powers of the Lands Clauses Acts relating to the purchase and taking of land otherwise than by agreement, and to the entry upon lands by the promoters of the undertaking, are made available, subject to formal modifications and to a provision extending the meaning of land so as to include easements (*l*). But the Board cannot by Provisional Order authorise the compulsory acquisition of any land which, at the date of the first publication of the notice for the Order, belongs to any gas or water undertakers, and is used, or authorised to be used, by them for the purposes of their undertaking (*m*).

Acquisition and use of land for generating station.

Land of gas or water undertakers.

The Board may by Provisional Order authorise any local authority, company, or person authorised to supply electricity in any area, to supply at any point within that area electricity to be used for purposes incidental to the working or lighting of any railway, tramway, or canal situate partly within and partly without that area, other than purposes for which the Board are empowered by the Electric Lighting Act, 1909 (*n*), to authorise a supply without recourse to Provisional Order (*o*). A body receiving a supply under such a Provisional Order are, however, subject to a prohibition against using the electricity so as to interfere with Government or statutory observatories or laboratories (*p*).

Supply to railways, tramways, and canals.

The Board, unless they are of opinion that, by reason of the character or magnitude of the proposed undertaking, the matter ought to be dealt with by private Bill, may by Provisional Order (a) authorise any local authority or company to supply electricity in bulk; (b) provide for any supply so authorised being compulsory; and (c) make such other provisions as appear to them necessary for adapting the Electric Lighting Acts to any case where a local authority or company are authorised to supply electricity in bulk, including the application to roads, railways, and tramways along the route along which lines are authorised to be laid for the purpose of giving the supply in bulk, of the provisions of those Acts which authorise or

Supply in bulk.

carrying on of an electrical and tramway undertaking in the boroughs of Stalybridge, Hyde, Mossley, and Dukinfield is constituted by 1 Edw. 7, c. cxcv.

(*k*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 1 (1). As to the notices of an application for a Provisional Order under the section, see note (*d*), p. 559, *post*; and as to the necessity for express authority to use land for a generating station, see p. 570, *post*.

(*l*) *Ibid.*, s. 1 (2). See p. 568, *post*.

(*m*) *Ibid.*, s. 24.

(*n*) *I.e.*, haulage or traction on the railway, tramway, or canal, and lighting vehicles and vessels to be used thereon; see p. 595, *post*.

(*o*) *Ibid.*, s. 5 (2).

(*p*) *Ibid.*, s. 5 (3). See further, p. 595, *post*.

PART IV. Grant of Provisional Order.

enable the Board to authorise the breaking up of any road, railway, or tramway. If the Board refuse to grant a Provisional Order under these powers on the ground that the matter ought to be dealt with by private Bill, then, subject to the Standing Orders of Parliament, and subject to provisions for the giving of certain additional notices, the notices published and served for the purposes of the Provisional Order are to be held to have been published and served for the purposes of a private Bill applying for similar powers, and the application for the Provisional Order is to be treated as a petition for leave to bring in a private Bill (*q*).

Application for Provisional Order operating as petition for Bill.

Connection with area of supply of generating station outside area.

For the purpose of enabling electricity to be brought into an area of supply from a generating station belonging to any undertakers situated outside that area, the Board may by Provisional Order apply to any roads, railways, or tramways situated outside that area the provisions of the Electric Lighting Acts which authorise, or enable the Board to authorise, the breaking up of any road, railway, or tramway, so far as those provisions do not already so apply (*r*).

Purchase of undertakings by local authorities.

Lastly, the Board have certain powers for dealing by Provisional Order with the purchase of undertakings by local authorities (*s*).

Notice of application for Provisional Order.

1108. A Provisional Order authorising the supply of electricity within the district of a local authority by other undertakers must not, however, be granted by the Board of Trade, unless (except where the local authority waive their right to such notice) notice of the intended application for the Order has been duly given to the authority on or before July 1st in the year in which the application is made; nor must it be granted without the consent of that authority, unless the Board, if the consent is refused, are of opinion that, having regard to all the circumstances of the case, the consent ought to be dispensed with (*t*). No such notice need, however, be given to the local authority of a district in which it is not intended to take power to distribute electricity (*u*).

Consent of local authority.

Again, a Provisional Order authorising the breaking up of roads outside the area of supply (*a*) must not be granted except with the consent of the local authority in whose district the road is situate, unless the Board, if the consent is refused, are of opinion that, having regard to all the circumstances of the case, the consent ought to be dispensed with (*b*).

Where the Board dispense with the consent of a local authority

(*q*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 4. For special legislation authorising supply in bulk, see pp. 627—635, 639, *post*.

(*r*) *Ibid.*, s. 3. Provisions for the purpose contemplated by this section have frequently been inserted in the Acts confirming Provisional Orders.

(*s*) See pp. 600, 601, *post*.

(*t*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 4; Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), s. 1; Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 9.

(*u*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 9. The provision that notice need not be given to the local authority seems to imply that their consent is not required.

(*a*) Under the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), ss. 3, 4 (1).

(*b*) *Ibid.* Observe that the consent required is that of the local authority in whose district the road is situate, whether they or any other body or persons are responsible for its maintenance.

in any of the above-mentioned cases they are to make a special report to Parliament stating their grounds for so doing (*c*).

Procedure on application for or objection to Provisional Order.

1109. The procedure on application for, and on objections against the grant of, a Provisional Order is regulated almost entirely by rules issued by the Board of Trade (*d*). The passing of a resolution at a special meeting is, however, required by statute in the case of an application by a local authority (*e*). And, in connection with the Bill for the confirmation of the Order, compliance with the Standing Orders of Parliament is necessary in addition to the compliance with the rules of the Board (*f*).

Opportunity for objection to be given.

1110. The Provisional Order must not be granted by the Board of Trade until opportunity has been given to all parties interested to make representations or objections to the Board with regard to the application (*g*).

Competition between undertakers.

1111. The grant of authority to any undertakers to supply electricity within any area by licence or Provisional Order is not in any way to hinder or restrict the granting of a licence or Provisional Order to the local authority, or to any other company or person within the same area (*h*).

Applications from local authorities have preference.

1112. Where applications for Provisional Orders authorising the supply of electricity within the district of a local authority are received by the Board of Trade from the local authority and other applicants, the Board give the preference to the local authority if, in the opinion of the Board, no special circumstances exist rendering such preference inexpedient (*i*).

Confirmation of Provisional Order.

1113. The Board of Trade will submit to Parliament for confirmation any Provisional Order granted by them under the Electric Lighting Acts, 1882 to 1909, but the Order is of no force until it is confirmed by Parliament (*k*).

(*c*) Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), s. 1; Electric Lighting Act, 1909 (9 Edw. 7, c. 34), ss. 3, 4 (1).

(*d*) The Board have power to make rules on the subject, and as to other matters arising under the Electric Lighting Acts, under the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 5. And by the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 1 (3), the Board are required to provide, by rules under s. 5 of the Act of 1882, for notices to owners, lessees, and occupiers, and also for public notice, in the case of an application for a Provisional Order authorising the compulsory acquisition or use of land for a generating station. Rules under s. 5 of the Act of 1882 have, by virtue of that section, statutory force and are to be judicially noticed; and they are to be laid before Parliament, but their validity does not appear to depend on their having been so laid. See the Scotch case of *Hepburn* v. *Wilson* (1901), 3 Adam, 502. The rules at present (1910) in force were issued in September, 1899 (Stat. R. & O. Rev., Vol. IV., Electric Lighting, p. 1).

(*e*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), ss. 3 (6), 4.

(*f*) See the note appended to the rules of the Board of Trade of September, 1899, referred to in note (*d*), *supra*. See also title PARLIAMENT.

(*g*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), ss. 3 (5), 4.

(*h*) Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), s. 1.

(*i*) See the note appended to the Rules of the Board of Trade of September, 1899, referred to in note (*d*), *supra*.

(*k*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 4 (2).

PART IV. Grant of Provisional Order.

Opposition to Bill.

If while the Bill confirming any such Order is pending in either House of Parliament a petition is presented against any Order comprised therein, the Bill, so far as it relates to that Order, may be referred to a select committee, and the petitioner is to be allowed to appear and oppose as in the case of a private Bill (*l*)

Part V.—Powers and Duties of Undertakers.

SECT. 1.—*Introductory.*

Introductory explanation.

1114. In the ensuing account of the powers and duties of the undertakers carrying on an electric undertaking it is assumed that the undertaking is authorised by a Provisional Order which (as is usual in the case of Provisional Orders as to provincial undertakings in England confirmed since the passing of the Electric Lighting (Clauses) Act, 1899 (*a*)) incorporates the whole of the schedule to that Act except the clauses applicable to Scotland and Ireland, and which contains itself only special provisions of the kind that have been generally inserted in such Provisional Orders.

The provisions of the Electric Lighting Acts, 1882 to 1909 (*b*), to which there will be occasion to refer, are, however, not confined to undertakings authorised by Provisional Order, but apply also, subject to the provisions of the special Act, to undertakings authorised by the special Act (*c*). The provisions of the schedule to the Electric Lighting (Clauses) Act, 1899 (*d*), are incorporated not only with subsequent Provisional Orders, but subject to the express provisions of the special Act, with subsequent special Acts, authorising provincial undertakings. And Provisional Orders and special Acts not incorporating the schedule to the Act of 1899 in general contain provisions practically identical with, or differing comparatively little from, provisions in that schedule (*e*).

(*l*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 4 (3). And see title PARLIAMENT for private Bill procedure.

(*a*) 62 & 63 Vict. c. 19.

(*b*) 45 & 46 Vict. c. 56; 51 & 52 Vict. c. 12; 9 Edw. 7, c. 34.

(*c*) See pp. 543, 544, *ante*.

(*d*) 62 & 63 Vict. c. 19. As the present part of the title is written as an account of an undertaking authorised by a Provisional Order incorporating the schedule to the Act of 1899, in other words, an undertaking authorised by a "special Order" within the meaning of that schedule (see p. 550, *ante*), the undertaking is spoken of in the present part of the title as authorised by "special Order," even in dealing with sections of the Electric Lighting Acts, although these Acts do not use the expression "special Order," but other and generally wider expressions, such as "licence," "Order," or "special Act." In the same way the expression "the undertakers" is used in dealing with sections of the Acts which use other expressions, such as a "local authority," "company," or "person authorised to supply electricity." In cases where the language of a section is thus departed from, however, its scope is indicated in the footnotes.

(*e*) The schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), consists, as has been stated (p. 544, *ante*), of provisions, generalised in form, which had been usual in Orders granted before the Act. The form employed for

SECT. 1. Introductory.

Consequently, while the possibility of peculiar legislation affecting a particular undertaking must not be forgotten, the ensuing account of the powers and duties of the undertakers is in great measure of general application in reference to undertakings of a normal character.

SECT. 2.—*General Powers and Obligations.*

General powers.

1115. The undertakers may, subject to and in accordance with the provisions and restrictions of the Electric Lighting Acts, and of any rules made by the Board of Trade in pursuance thereof, and of the special Order (*f*) authorising or affecting their undertaking, and for the purpose of supplying electricity, acquire such lands by agreement (*g*), construct such works (*h*), acquire such licences for the use of any patented or protected processes, inventions, machinery, apparatus, methods, materials, or other things, enter into such contracts (*i*), and generally do all such acts and things as may be necessary and incidental to such supply (*j*).

Compensation for damage.

1116. In the exercise of the powers in relation to the execution of works given them by the Electric Lighting Acts or the special Order (*k*), the undertakers must cause as little detriment and inconvenience and do as little damage as possible (*l*), and must make full compensation to all bodies and persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers (*m*), the amount and application of such compensation in case of difference to be determined by arbitration (*n*).

Power of local authority to contract.

1117. Where a local authority are the undertakers they may contract with any company or person for the execution and maintenance of any works needed for the purposes of the authorised supply of electricity, or for the supply of electricity within the area of supply or any part of it (*o*).

such Orders immediately before the Act, and on which the Act was founded, had, however, developed gradually; and many of the provisions of the earlier Orders are accordingly less complete than, and otherwise diverge in detail from, those of the schedule to the Act of 1899.

(*f*) The words are "any licence, Order, or special Act authorising or affecting their undertaking."

(*g*) See further, p. 568, *post*.

(*h*) See further, p. 570, *post*.

(*i*) See further, p. 588, *post*.

(*j*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 10.

(*k*) The words are "any licence, Order, or special Act."

(*l*) The provision that the undertakers are to cause as little detriment etc. and do as little damage as possible appears to refer to the way in which the works are carried out, and not to limit any discretion which the undertakers have as to what works they will carry out. See *R.* v. *East and West India Docks and Birmingham Junction Rail. Co.* (1853), 2 E. & B. 466, *per* Lord CAMPBELL, C.J., at p. 474; *Fenwick* v. *East London Rail. Co.* (1875), L. R. 20 Eq. 544, *per* JESSEL, M.R., at p. 549.

(*m*) *Ite.*, the powers for the execution of the works as distinguished from those for using the works; see *Shelfer* v. *City of London Electric Lighting Co.*, [1895] 1 Ch. 287, C. A.

(*n*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 17. As to arbitration under the Act, see p. 615, *post*.

(*o*) *Ibid.*, s. 11.

SECT. 2. General Powers and Obligations.

Prohibition against transfer of powers.

1118. The undertakers must not, by transfer or otherwise, divest themselves of any of the powers, rights, or obligations conferred or imposed on them by the Electric Lighting Acts, or by the special Order, otherwise than under and in accordance with a provision contained in a licence, Order, or special Act authorising such a divestiture (*p*). An agreement by which the undertakers in fact, in a practical sense, hand over the control of the undertaking to contractors is a transfer of the undertakers' powers within the prohibition, and void accordingly, notwithstanding that it contains a clause in terms declaring that the agreement is not to be deemed to create a relationship between the undertakers and the contractors, the creation of which is prohibited (*q*).

Prohibition against combination etc. between undertakers.

The undertakers are further prohibited from purchasing or acquiring the undertaking of, or associating themselves with, any company or person supplying energy under any licence, Provisional Order or special Act, unless the undertakers are authorised by Parliament to do so (*r*). The prohibition, however, is not to be construed as prohibiting the undertakers from taking a supply of electricity in bulk from any company or person authorised to give such a supply (*s*). In case of contravention of the prohibition, the Board of Trade may, if they think fit, revoke the special Order upon such terms as they think just (*t*).

Prohibition against competition by unauthorised undertakers.

1119. It is unlawful for any local authority, company, or person other than the undertakers to commence to supply or distribute electricity within the area of supply of any undertakers, unless authorised by Act of Parliament, or by licence or Provisional Order under the Electric Lighting Acts. But the prohibition does not prevent any company or person whose business is not primarily that of the supply of electric energy to consumers from affording a supply to any other company or person. Nor does it prevent any company empowered, on November 25th, 1909, by their memorandum of association to generate electric energy from affording a supply

(*p*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 14, providing that "a local authority, company, or person who have obtained a licence, Order, or special Act for the supply of electricity" shall not etc.

(*q*) *Sudbury Corporation* v. *Empire Electric Light and Power Co., Ltd.*, [1905] 2 Ch. 104, decided under provisions in the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 11, now repealed and replaced by the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 14. Powers for the transfer of an undertaking are frequently inserted in Provisional Orders (see pp. 635, 636, *post*). Agreements of the character of that in the Sudbury case have in some cases been confirmed by special Acts (see 7 Edw. 7, cc. xci. (Electric Supply Corporation), xcix. (Richmond, Surrey)).

(*r*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 3.

(*s*) Electric Lighting Act, 1909 (9 Edw. 7. c. 34), s. 20. The section, which is expressed to be enacted for removing doubts, applies not only to the prohibition in the Electric Lighting (Clauses) Act (62 & 63 Vict. c. 19), schedule, s. 3, but to other similar prohibitions. Provisions similar to those of the section have been generally inserted in recent Provisional Orders. Powers of mutual association have been conferred on particular undertakers by special legislation in many cases. See particularly the metropolitan legislation referred to pp. 619, 620, *post*.

(*t*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 3. As to the revocation of the special Order, see p. 603, *post*.

to a railway company for purposes incidental to that company's undertaking other than the conveyance of public traffic (*u*).

SECT. 3.—*Mortgage of Undertaking.*

Mortgage of undertaking.

1120. The special Order does not prevent the undertakers (not being a local authority) from borrowing on the security of mortgages of the undertaking, or render the consent or approval of the Board of Trade necessary to the validity or effect of such a mortgage. But every such mortgage is to be deemed to comprise all purchase-money which may be paid to the undertakers in the event of any sale or transfer of the undertaking or any part of it, under s. 2 of the Electric Lighting Act, 1888 (*v*), or the special Order. A mortgage granted by the undertakers is not a charge on the undertaking or any part of it in the event of the undertaking or that part being so sold or transferred; and every mortgage deed granted by the undertakers is to be indorsed with notice to that effect (*w*).

SECT. 4.—*Responsibility of Undertakers for Nuisance etc.*

Undertakers' liabilities in tort.

1121. As regards injury caused to others in the carrying on of the undertaking, the undertakers are in many respects in no better position than persons supplying electricity without statutory powers would be.

Undertakers' powers do not authorise nuisance.

In the first place, their powers under the special Order are subject to a provision that nothing in the special Order shall exonerate them from any indictment, action, or other proceeding for nuisance in the event of any nuisance being caused or permitted by them (*x*).

Nuisance from generating station.

One result of this enactment is that the undertakers are in some cases prevented from justifying the creation of a nuisance in the ordinary sense—*e.g.*, by vibration from machinery—even where they have powers which, but for the enactment, would have justified the nuisance (*y*).

(*u*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 23. The section provides that "where in any area a local authority, company, or person is authorised to supply electricity under Act of Parliament or under licence or Provisional Order, . . . it shall not, after the passing of this Act, be lawful for any other local authority, company, or person to commence to supply or distribute electricity within the same area," unless etc. The prohibition would seem to extend to cases where supply in any area is authorised after the Act of 1909, but, in such cases, must apparently be confined to a subsequent commencing to supply without authority. The Act of 1909 received the royal assent on November 25th, 1909.

(*v*) 51 & 52 Vict. c. 12, s. 2; see p. 600, *post*.

(*w*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 78.

(*x*) *Ibid.*, s. 81.

(*y*) See *Shelfer* v. *City of London Electric Lighting Co.*, [1895] 1 Ch. 287, C. A., where the defendant company were restrained from working a generating station so as to cause a nuisance. The decision, though turning partly on the enactment equivalent to s. 81 of the schedule to the Act of 1899, *supra*, applicable to the defendants' undertaking, would apparently have been the same in the absence of that enactment, on the ground that the general powers of s. 10 of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), as to which, see p. 561, *ante*, on which alone the defendants could rely as authorising the acquisition of land for, or the erection of, the generating station, were enabling only (compare *Metropolitan Asylum District* v. *Hill* (1881), 6 App. Cas. 193; *Rapier* v. *London*

SECT. 4. Responsibility of Undertakers for Nuisance etc.

Another result is that the doctrine (*a*) under which he who employs a dangerous agency does so at his peril applies to the undertakers as it does to a private individual; so that in the case of an accident caused by their employment of electricity they may be liable even in the absence of negligence (*b*), notwithstanding the principle that in general those carrying on statutory undertakings are liable in such cases only if negligence is proved (*c*).

Application of doctrine of *Rylands* v. *Fletcher*.

At the same time, some of the powers given to the undertakers undoubtedly justify what in the absence of such powers would be a nuisance; for instance, the powers to break up streets (*d*).

Breaking up of streets.

Tramways Co., [1893] 2 Ch. 588, C. A.). But, where it applies, s. 81 of the schedule to the Act of 1899 prevents undertakers from justifying a nuisance from a generating station erected on land which they have special power to acquire or utilise for the purpose. In many cases, however, where power to acquire or utilise specified land for a generating station has been given by statute, s. 81 of the schedule to the Act of 1899, or any corresponding provision applicable to the undertaking, has been declared inapplicable as regards nuisances caused by works of the undertakers on that land, with, in a few cases, the exception of nuisances due to particular causes (see p. 630, *post*, and compare the metropolitan legislation referred to, p. 622, *post*). The Board of Trade are enabled by the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 1 (see p. 557, *ante*), to confer powers of the kind by Provisional Order. But whether the Board will in any case be prepared to frame such a Provisional Order so as to exclude nuisances arising from the working of the generating station from the operation of s. 81 of the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), remains to be seen.

As to the effect of such enactments as s. 81 of the schedule to the Act of 1899, see further, *A.-G.* v. *Gas Light and Coke Co.* (1877), 7 Ch. D. 217; *Jordeson* v. *Sutton, Southcoates and Drypool Gas Co.*, [1899] 2 Ch. 217, C. A. *Batcheller* v. *Tunbridge Wells Gas Co.* (1901), 84 L. T. 765.

For cases, turning on the facts, in which proceedings have been taken against electrical undertakers in respect of alleged nuisances from generating stations, see *Colwell* v. *St. Pancras Borough Council*, [1904] 1 Ch. 707; *Knight* v. *Isle of Wight Electric Light and Power Co.* (1904), 73 L. J. (CH.) 299.

In *Demerara Electric Co.* v. *White*, [1907] A. C. 330, P.C., where, under colonial legislation, the company were, on the same date, authorised by an Order to supply electricity for all purposes and use it for the purpose of any undertaking, and authorised by a licence to operate a tramway undertaking by electric power, a clause in the Order preserving the company's liability for nuisance was held to cover nuisances caused in the generation of electricity for the purpose of the tramways, though the licence contained no similar clause.

(*a*) With regard to this doctrine, known as the doctrine of *Rylands* v. *Fletcher* (1868), L. R., 3 H. L. 330; 1 Smith, L. C., 11th ed., 810; see note (*a*) on p. 583, *post*, and titles NEGLIGENCE; NUISANCE.

(*b*) *Midwood & Co., Ltd.* v. *Manchester Corporation*, [1905] 2 K. B. 597, C. A.

(*c*) As to this principle, see titles NEGLIGENCE; NUISANCE. In *Solomons* v. *Stepney Borough Council* (1905), 69 J. P. 360, where the principle was assumed to apply to the undertakers of an electric lighting undertaking, the statutory provisions preserving the liability of the undertakers for nuisance and accident were not brought to the attention of the court.

(*d*) See *per* ROMER, L.J., in *Midwood & Co., Ltd.* v. *Manchester Corporation*, *supra*. Possibly the main powers of the undertakers for interference with streets, being derived from s. 12 of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), and the provisions of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), incorporated therewith, and not (like their powers under s. 10 of the Act of 1882) being expressed to be subject to the Provisional Order, licence, or special Act, are not controlled by s. 81 of the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19). This explanation was not suggested in *Midwood & Co., Ltd.* v. *Manchester Corporation*, *supra*. The powers given by the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), are themselves subject to a section in that Act (s. 29), which, however, is not incorporated with the Electric Lighting

SECT. 4.
Responsibility of Undertakers for Nuisance etc.

Undertakers' responsibility for accidents.

Secondly, the undertakers are declared answerable for all accidents, damages, and injuries happening through the act or default of the undertakers, or of any person in their employment, by reason of or in consequence of any of the undertakers' works, and are required to save harmless all authorities, bodies, and persons by whom any street is repairable, and all other authorities, companies, and bodies collectively and individually, and their officers and servants, from all damages and costs in respect of those accidents, damages, and injuries (*e*). But whether the responsibility thus cast on them extends to accidents etc. not due to the negligence of the undertakers or of those for whom they are responsible is doubtful (*f*).

Electrolysis.

1122. It is the practice to insert in Acts and Orders authorising the use of electricity for the purposes of traction on railways and tramways express provisions dealing with the danger to metal gas and water pipes, and similar apparatus, from electrolytic action set up by electric currents due to the operations of the body working the railway or tramway (*g*). But though clauses dealing with the danger of electrolysis have been inserted in a few special Acts (*h*), there is no general legislation on the matter applicable to undertakings under the Electric Lighting Acts (*i*).

Powers of Commissioners of Works as to nuisance from generating station.

1123. With a view to the protection of the royal palaces, parks, and gardens, museums, and other public buildings, and their contents,

Act, 1882 (45 & 46 Vict. c. 56), similar to s. 81 of the schedule to the Act of 1899. As to how far negligence is an element in the liability of promoters of a gas undertaking for an accident arising out of the exercise of the powers of the Act of 1847 for interfering with streets, see *Hornby* v. *Liverpool United Gas Light Co.* (1883), 47 J. P. 231, as to which case see further note (*o*), p. 573, *post*; *Goodson* v. *Sunbury Gas Consumers Co., Ltd.* (1896), 75 L. T. 251; *Price* v. *South Metropolitan Gas Co.* (1895), 65 L. J. (Q. B.) 126, in none of which cases, however, was s. 29 of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), considered.

(*e*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 77.

(*f*) In *Brocklehurst* v. *Manchester, Bury, Rochdale and Oldham Steam Tramways Co.* (1886), 17 Q. B. D. 118, a precisely similar enactment in the Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 55, was held not to render the tramway promoters liable, in the absence of negligence, for an accident caused by a tramcar to a person using the highway. But in *Midwood & Co., Ltd.* v. *Manchester Corporation*, [1905] 2 K. B. 597, C. A., MATHEW, L.J., expressed the opinion that a similar enactment applicable to an electric undertaking rendered the undertakers liable in the case of an explosion and fire caused by their mains apart from negligence, distinguishing the Brocklehurst case on the ground of the difference in character between a tramway undertaking and an electric undertaking. In *Dumphy* v. *Montreal Light, Heat, and Power Co.*, [1907] A. C. 454, P. C., where the defendant company had statutory powers for the supply of electricity in Montreal, and for that purpose to place wires under or over the streets, subject to the proviso that the company should be "responsible for all damages which it may occasion," it was assumed that the company would not be liable for an accident caused by their wires in the absence of negligence; and the points decided were that as the company had the statutory option of placing their wires overhead or underground, it could not be negligent on their part to select the former alternative, and that a finding of a jury that they had been negligent in failing to insulate or guard their wires could not be sustained in the absence of evidence that such precautions would have been effectual.

(*g*) See titles RAILWAYS AND CANALS; TRAMWAYS AND LIGHT RAILWAYS.

(*h*) See, *e.g.*, 3 Edw. 7, c. ccxxxviii., s. 34.

(*i*) The restrictions on the undertakers as to the earthing of circuits (see p. 567, *post*) are in general regarded as a sufficient security against danger from electrolysis.

SECT. 4. Responsibility of Undertakers for Nuisance etc.

powers are vested in the Commissioners of Works for inspecting any generating station of any undertakers, and requiring (subject to provisions for the reference of disputes to arbitration) works to be executed and things done by them to secure due consumption of smoke, prevent evolution of oxides of sulphur, and generally prevent nuisance (*j*).

SECT. 5.—*Area of Supply.*

Area of supply.

1124. The undertakers' "area of supply" is always delimited by the Provisional Order (*k*).

Prohibition against supply outside area of supply.

The undertakers may be specially authorised by Provisional Order or otherwise to supply electricity to a certain extent outside their area of supply, and, in connection with such authority, given special powers for the breaking up of streets etc. for the purpose of constructing and laying down lines and works (*l*). But unless so authorised, the undertakers must not supply energy or, except for the purposes of the special Order, erect or lay down any electric lines or works beyond the area of supply (*m*) otherwise than under the authority of Parliament, or under a licence (*n*) granted by the Board of Trade (*o*). This prohibition is not merely against the utilisation by the undertakers of their powers under the special Order for the purpose of supplying energy elsewhere than in the area of supply, but is of a general character, so that, for example, it prevents a limited liability company who obtain a special Order for a given area from supplying energy by private agreement elsewhere (*p*). The prohibition would be infringed by the supply to a consumer at a point within the area of supply of energy to be utilised by the consumer outside that area (*q*).

(*j*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 22. The section is inapplicable to the Horseferry Road station of the Westminster Electric Supply Corporation, Limited. Compare the metropolitan legislation referred to, p. 622, *post*.

(*k*) The Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 4 (1), provides that "the area of supply shall be the area named for that purpose in the special Order."

(*l*) See pp. 557, 558, *ante*; pp. 595, 596, *post*.

(*m*) Though the laying of wires etc. outside the area of supply for the purposes of supply within it is not prohibited, the powers of the Electric Lighting Acts and of the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), for breaking up streets etc. are, unless specially extended, confined to the area of supply (see pp. 573, 576, *post*). Hence special authority is generally necessary where the undertakers propose to lay wires outside their area of supply for the purpose of supply within it. Such authority may now be given by Provisional Order (see p. 558, *ante*). *Battersea Vestry* v. *County of London and Brush Provincial Electric Lighting Co., Ltd.*, [1899] 1 Ch. 474, C. A., and *Finchley Electric Light Co.* v. *Finchley Urban Council*, [1903] 2 Ch. 437, C. A., are instances in which undertakers under the Electric Lighting Acts have placed lines in streets outside their area of supply without powers in that behalf, and litigation has ensued. As to these cases, and as to interference with highways without statutory powers generally, see title HIGHWAYS, STREETS AND BRIDGES.

(*n*) No such licence has been granted.

(*o*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 4 (2).

(*p*) *A.-G.* v. *Metropolitan Electric Supply Co., Ltd.*, [1905] 1 Ch. 757, C. A.

(*q*) See *Gas Light and Coke Co.* v. *South Metropolitan Gas Co.* (1889), 62 L. J. (CH.) 123, H. L.; *A.-G.* v. *West Gloucestershire Water Co.*, [1909] 2 Ch. 338, C. A.

If the undertakers supply energy or erect or lay down electric lines or wires in contravention of the prohibition, the Board of Trade may, if they think fit, revoke the special Order on such terms as they deem just (*r*).

SECT. 5. Area of Supply.

SECT. 6.—*System and Mode of Supply.*

1125. The undertakers are authorised, subject to the provisions of the special Order and of the principal Act, to supply electric energy within the area of supply, for all public and private purposes as defined by the Electric Lighting Act, 1882 (*s*), subject to conditions to the following effect:— Conditions of supply.

The energy is to be supplied only by means of some system approved in writing by the Board of Trade, and subject to the Board's regulations (*t*). Approval of system by Board of Trade; Board of Trade regulations.

The undertakers must not, without the express consent of the Board of Trade, and (except where they are the undertakers) of the local authority, place any electric line above ground except within premises in the sole occupation or control of the undertakers, and except so much of any service line as is necessarily so placed for the purpose of supply. And they must not permit any part of any circuit to be connected with earth except so far as may be necessary for carrying out the provisions of the Board of Trade regulations, unless the connection is for the time being approved by the Board, with the concurrence of the Postmaster-General, and is made in accordance with the conditions, if any, of that approval (*u*). Overhead wires. Earthing of circuits.

SECT. 7.—*Security for Execution of Works.*

1126. The undertakers, except where they are a local authority, must, within a limited time after the commencement of the special Order and before exercising their powers for the execution of works, satisfy the Board of Trade of their being in a position to discharge their obligations, and also deposit or secure to the satisfaction of the Board the sum fixed in that behalf (*a*). On default of the undertakers in these respects the Board, after considering any representations of the local authority, may revoke the special Order as to the whole, or with the undertakers' consent, any part of the area of supply (*b*). Security for execution of works.

The sum deposited or secured is to be repaid or released to the undertakers in moieties upon certificates that amounts equal to the sums to be repaid or released have been expended by them upon their works, or that distributing mains have been duly laid in the streets where the undertakers are required to lay such mains within Repayment or release of deposit or security.

(*r*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 4 (3). As to the revocation of the Order, see p. 603, *post*.

(*s*) 45 & 46 Vict. c. 56, s. 3 (3), (4). See p. 547, *ante*.

(*t*) As to the Board of Trade Regulations, see p. 545, *ante*.

(*u*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 10. As to the consequences of a breach of the conditions, see *ibid.*, s. 69, cited p. 603, *post*. As to overhead wires, see further, p. 603, *post*.

(*a*) The sum is in practice specified in the Provisional Order.

(*b*) As to the revocation of the Order, see p. 603, *post*.

SECT. 7. Security for Execution of Works.

a limited period, or at such earlier dates and by such instalments as may be approved by the Board of Trade.

Where the area of supply comprises districts or parts of districts of two or more local authorities, a separate deposit or security may be required as regards each district, and in that case the deposit or security is to be repaid or released separately as to each district (*c*).

SECT. 8.—*Acquisition of Land.*

Acquisition of land.

1127. The undertakers have power (restricted to a certain extent in cases where a local authority are the undertakers (*d*), but unrestricted in other cases) to acquire land, and easements in or relating to lands, for the purposes of their undertaking by agreement (*e*); and they may be given powers by Provisional Order for the compulsory acquisition of land, and easements in or relating to land, for the purpose of a generating station (*f*). And the powers of the Lands Clauses Acts (*g*) are made available to the undertakers accordingly (*h*).

(*c*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 5. There is no express provision as to the application of the deposit or secured sum in cases where it is not repaid or released to the undertakers, except in the event of the revocation of the Order. See p. 604, *post*.

(*d*) See p. 569, *post*.

(*e*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 10. See p. 561, *ante*. The Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), contains no provisions with regard to the acquisition of land by undertakers other than a local authority.

(*f*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 1. See p. 557, *ante*.

(*g*) The Lands Clauses Acts, "except the enactments with respect to the purchase and taking of lands otherwise than by agreement, and except the enactments with respect to the entry upon lands by the promoters of the undertaking," are incorporated with the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), by s. 12 of that Act. And by the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 1, the provisions of the Lands Clauses Acts relating to the matters mentioned in the above exception are, for the purpose of the acquisition of land under a Provisional Order granted under that section, incorporated with the Electric Lighting Acts as well as the provisions already so incorporated by the Act of 1882. In the provisions of the Lands Clauses Acts as incorporated by the Act of 1882, "the special Act" means the Electric Lighting Acts inclusive of any licence, Order, or special Act; "promoters" or "undertakers" and "the undertaking" respectively mean the undertakers and the undertaking under the Electric Lighting Acts; and "land" includes easements in or relating to lands (see the Act of 1882, s. 12). In the provisions of the Lands Clauses Acts as incorporated by the Act of 1909, "special Act" means the Electric Lighting Acts inclusive of any Provisional Order authorising the compulsory acquisition of land, except that the three years mentioned in the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 123, is to be calculated from the passing of the Act confirming the Provisional Order; "promoters" and "the undertaking" mean respectively the undertakers and the undertaking under the Electric Lighting Acts; and "land" includes "easements in or relating to land" (see the Act of 1909, s. 1 (2), and Sched. I.). For the definition of "Lands Clauses Acts" in the Act of 1882, see p. 549, *ante*; and as to the Acts generally, see title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 1—11 *et seq.*

(*h*) Compulsory powers for the acquisition of land are frequently conferred on undertakers by special Act; and such Acts often expressly empower them to acquire a limited quantity of land by agreement in addition to any lands they are empowered to acquire compulsorily (see, *e.g.*, the enactments referred to at p. 629, *post*). Such a provision would probably, in general, prevent the powers of

SECT. 8.
Acquisition of Land.

1128. Where a local authority are the undertakers they may acquire by purchase or on lease and use any lands for the purposes of the special Order, and may also use any other lands for the time being vested in or leased by them, but subject as to the last-mentioned lands to the approval of the Local Government Board, and may dispose of any lands acquired by them under the above provisions which may not for the time being be required for the purposes of the special Order. But the amount of the land so used by them must not at any one time exceed in the whole five acres without the consent of the Board of Trade (*i*).

Acquisition and utilisation of land by local authority.

The authority must not, however, purchase or acquire for the purposes of the special Order ten or more houses which on December 15th preceding the commencement of that Order, or, in the case of the transfer of an undertaking to a local authority, preceding the date of transfer, were occupied either wholly or partially by persons belonging to the "labouring class" as tenants or lodgers, or, except with the consent of the Local Government Board, ten or more houses which were not so occupied on such December 15th, but have been or are subsequently so occupied (*j*).

Rehousing obligations.

The local authority must not appropriate land acquired by them for the purpose of the undertaking to other purposes (*k*), except temporarily and in a manner consistent with the utilisation of the

Appropriation of land acquired for undertaking to other purposes.

the Electric Lighting Acts from authorising the acquisition by the undertakers of more than that limited quantity of land.

By the Housing of the Working Classes Act, 1903 (3 Edw. 7, c. 39), ss. 3, 16, schedule, provisions are made as to the rehousing in certain cases of persons of the working class on the acquisition of land, under, *inter alia*, powers given, after the passing of that Act, by local Act or Provisional Order. These provisions would apply in the case of the acquisition of land by the undertakers of an electric undertaking under a special Act subsequent to the Act of 1903; and more or less similar provisions will generally be found in earlier special Acts giving powers for the acquisition of land. They would apply also in the case of land the compulsory acquisition of which was authorised by a Provisional Order granted under the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 1. Whether they would apply in the case of the acquisition of land by the undertakers by agreement under their general powers if the undertaking was authorised by a Provisional Order confirmed after the Act of 1903 does not seem clear. In the case of undertakers other than a local authority, the question would apparently depend simply upon whether the powers for the acquisition of the land, though depending upon provisions in the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), could be regarded as given by the Provisional Order; but in the case of a local authority the question is further complicated in consequence of the express though apparently superfluous powers for the acquisition of land given by the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 8 (1), cited in note (*i*), *infra*. Certain obligations as to rehousing are imposed in the case of a local authority by s. 8 (2) of the schedule to the Act of 1899, cited in note (*j*), *infra*.

(*i*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 8 (1). The restriction as to acreage is as to the land to be "used," not as to land to be acquired. As to the acquisition of land by a local authority for a purpose for which it cannot be used until further authority is obtained, see *Ward* v. *Portsmouth Corporation*, [1898] 2 Ch. 191, C. A.

(*j*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 8 (2), and see *ibid.*, s. 8 (3), defining "labouring class." As to rehousing obligations, see also note (*h*) on p. 568, *ante*.

(*k*) *A.-G.* v. *Pontypridd Urban Council*, [1906] 2 Ch. 257, C. A.; and see *A.-G.* v. *Hanwell Urban Council*, [1900] 2 Ch. 377, C. A.

SECT. 8. Acquisition of Land.

land for the purposes of the undertaking when the occasion arises (*l*), unless they have statutory authority in that behalf (*m*).

SECT. 9.—*Generating Stations.*

Authority for use of land for generating station.

1129. The undertakers must not, except with the consent of the Board of Trade, construct a generating station on any land acquired by them after March 31st, 1909, unless the construction is authorised and the land is specified in a special Act or Provisional Order; and the Board must not give such consent until due notice has been given to the local authority of the district in which the land is situate, and to owners and lessees of land within 300 yards of the land on which the station is to be constructed, and opportunity has been given to the local authority, owners, and lessees of stating objections. The prohibition does not, however, apply to a station for transforming, converting, or distributing electric energy (*n*).

Nuisances.

The liabilities of the undertakers as regards nuisances caused by the working of generating stations have already been considered (*o*).

SECT. 10.—*Works.*

General powers.

1130. The general powers of the undertakers for the execution of works have been mentioned, and it has been pointed out that these powers are, mainly at least, of an enabling character (*p*).

Specific powers.

In addition to their general powers, the undertakers have specific powers, which are not exclusively enabling, but to some extent authorise what might otherwise be tortious or illegal (*q*), for the purpose more particularly of enabling them to construct works in streets.

Breaking up of streets not repairable by local authority, railway, or tramway.

1131. The undertakers' powers do not extend to breaking up any street not repairable by the local authority, or any railway or tramway (*r*), without the consent of the authority, company, or person by whom the street, railway, or tramway is repairable (*s*),

(*l*) *A.-G.* v. *Teddington Urban Council*, [1898] 1 Ch. 66.

(*m*) *E.g.*, under the Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), s. 95.

(*n*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 2. For similar special legislation, see pp. 621, 622, 630, *post*. As to the power to authorise the acquisition or utilisation of land for a generating station, see p. 557, *ante*. The Board of Trade have issued a memorandum as to procedure on applications for their consent under the section.

(*o*) See pp. 563, 564, *ante*.

(*p*) See pp. 561, 563, *ante*.

(*q*) See p. 564, *ante*.

(*r*) For the definitions of "railway" and "tramway," see p. 551, *ante*.

(*s*) The enactments imposing the restrictions under consideration (see note (*u*), p. 571, *post*), like other enactments referred to later, are drawn apparently on the assumption that every street is repairable by some authority, body, or person. But in general there is no obligation, or at most only a contractual obligation, to repair a street which is not a highway, or which, though dedicated as a highway, has not become repairable by the inhabitants at large. The undertakers' powers for interfering with streets are not exercisable in the case of a street which is not dedicated without the consent of the owner or occupier of the land (see p. 574, *post*), so that in reference to such streets the restrictions are comparatively unimportant. But the rights of the undertakers in regard to streets which are dedicated, but which there is no obligation, or only a contractual obligation, to repair, are not clear. It may be that the undertakers

unless in pursuance of special power in that behalf inserted in the special Order (*t*) or with the written consent of the Board of Trade (*u*).

The Board must not insert such special power in a Provisional Order, or to give such consent, until the authority, body, or person by whom the street, railway, or tramway is repairable have been duly notified and given an opportunity of stating objections (*a*).

Overhead lines.

1132. The undertakers must not place any electric line above ground, along, over, or across any street, without the express consent of the local authority, and the local authority may require the undertakers to forthwith remove any electric line placed by them contrary to this restriction, or may themselves remove it and recover the expenses from the undertakers summarily. Where any electric line has been placed above ground by the undertakers in any position, a court of summary jurisdiction, upon complaint made, if of opinion that the line is or is likely to become dangerous to the public safety, may, notwithstanding such consent, order its removal by such person and upon such terms as they think fit (*b*).

are authorised to break up such a street without consent, or that the street should, for the purposes of the restrictions, be taken as repairable by those who have control over it so as to be entitled to repair it. And it may be that the question depends upon whether or not there is any contractual obligation to repair the street. Tramway promoters bound to repair part of a street under the Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 28, or similar legislation, appear not to be persons by whom the street is repairable within the enactments in question. See *Bristol Tramways and Carriage Co.* v. *National Telephone Co.*, [1899] 2 Ch. 282.

(*t*) The Provisional Order generally enumerates streets and frequently also railways and tramways which the undertakers may break up without consent.

(*u*) The Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 13, provides that nothing in that Act or the enactments incorporated therewith shall authorise the undertakers to break up any street not repairable by "such" local authority (meaning, no doubt, merely the local authority for the purposes of the Electric Lighting Acts), or any railway etc., without consent. And the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 12 (2), provides that nothing in the special Order shall authorise the undertakers to break up any street not repairable by "the" local authority, or any railway etc., without the consent either of the authority etc. by whom the street etc. is repairable, or of the Board of Trade under s. 13 of the Act of 1882. One result of the restriction is that the undertakers' general powers for breaking up streets do not extend to a main road in an administrative county not retained by an urban authority, unless due consent is obtained. As to the procedure on applications for consent under s. 13 of the Act of 1882, see the Rules of the Board of Trade (referred to note (*d*), p. 559, *ante*), made under s. 5 of that Act, and a memorandum recently (1910) issued by the Board.

(*a*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 13.

(*b*) *Ibid.*, s. 14, providing that "notwithstanding anything in this Act or in any Act incorporated therewith, the undertakers shall not be authorised" to place any electric line above ground etc. The section, having regard to the peculiar way in which it is expressed, is possibly not strictly prohibitory, but it is practically prohibitory. The Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 10 (b), prohibits the placing of wires above ground, whether in streets or elsewhere, without consent in any case of the Board of Trade, and also, except where they are the undertakers, of the local authority (see p. 567, *ante*). The restrictions on overhead wires are relaxed in the case of many undertakings under special Acts (see, *e.g.*, the enactments cited, p. 630, *post*). The Board of Trade always insert in a Provisional Order authorising an undertaking already in existence as an unauthorised undertaking a clause requiring the removal of existing overhead wires (other than

SECT. 10. Works.

Interference with telegraphic line of Postmaster-General.

1133. No alteration in any telegraph line of the Postmaster-General may be made by the undertakers except subject to the provisions of the Telegraph Act, 1878 (*c*). The undertakers must not in the exercise of their powers lay down any electric line or do any other work for the supply of electricity whereby any telegraphic line of the Postmaster-General is or may be injuriously affected, and before any such electric line is laid down or work is done within ten yards of any part of a telegraphic line of the Postmaster-General (other than repairs or the laying of connections with mains where the direction of the electric lines so laid crosses the line of the Postmaster-General at right angles at the point of shortest distance and continues the same for a distance of six feet on each side of such point) the undertakers or their agents must give due notice to the Postmaster-General specifying certain particulars, and they must (subject to provisions for the reference of disputes to arbitration) conform with such reasonable requirements, general or special, as may from time to time be made by the Postmaster-General for the purpose of preventing any telegraphs of the Postmaster-General from being injuriously affected by the work. For the purposes of these restrictions a telegraphic line of the Postmaster-General is to be deemed to be injuriously affected by a work if telegraphic communication by means of such line is, whether through induction or otherwise, in any manner affected by the work, or by any use made of the work. Compliance with the foregoing provisions is secured by penalties, subject to a saving for cases of emergency. And certain provisions of the Telegraph Act, 1878 (*d*), are made applicable with regard to them without prejudice to the operation of the rest of the Act (*e*).

Savings for rights and remedies of Postmaster-General.

Nothing in the special Order is to affect any right or remedy of the Postmaster-General under the principal Act or the Telegraph Acts, 1863 to 1897 (*f*); and all provisions contained in the special Order in favour of the Postmaster-General (*g*) are to be construed to be in addition to and not in modification of the provisions of those Acts (*h*).

Power to break up streets.

1134. Subject to the foregoing restrictions, and to certain saving clauses (*i*), the undertakers have the following powers for breaking up streets etc. under provisions in the Gasworks Clauses Act,

service lines necessarily placed above ground), unless the Board consent to their retention. The Board of Trade regulations contain special provisions as to overhead wires.

(*c*) 41 & 42 Vict. c. 76. See note (*e*), *infra*.

(*d*) *Ibid.*, ss. 2, 7—12.

(*e*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 26. The Telegraph Act, 1878 (41 & 42 Vict. c. 76), as to which and the amending Acts, see title TELEGRAPHS AND TELEPHONES, contains elaborate provisions for the protection of telegraphic lines of the Postmaster-General in cases where work done in the execution of a statutory undertaking of any nature involves or is likely to involve the temporary or permanent alteration of such lines.

(*f*) As to these Acts and the later Telegraph Acts, see title TELEGRAPHS AND TELEPHONES.

(*g*) For the provisions in the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, in favour of the Postmaster-General, see p. 567, *ante*, pp. 577, 603, 608, 612, *post*.

(*h*) *Ibid.*, s. 79.

(*i*) See p. 612, *post*.

1847, incorporated with the Electric Lighting Act, 1882 (*k*), though the exercise of those powers is in certain respects controlled by provisions in the schedule to the Electric Lighting (Clauses) Act, 1899 (*l*):—

They may, under the superintendence and subject to the restrictions and conditions mentioned below, open and break up streets and bridges, and sewers, drains, or tunnels within or under streets and bridges, in the area of supply, and lay down and place within that area electric lines, conduits, service lines, and other works, and from time to time repair, alter, or remove the same, and also make sewers for carrying off washings and waste liquids arising in making the electricity (*m*), and for the above purposes may remove and use earth and materials in and under such streets and bridges; and they may in such streets erect any pillars, lamps, and other works, and do all other acts which they deem necessary for supplying electricity to the inhabitants of the area of supply, doing as little damage as may be in the execution of their powers (*n*), and making compensation for any damage which may be done in the execution of such powers (*o*).

(*k*) The provisions of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), "with respect to breaking up streets for the purpose of laying pipes" (ss. 6—12), together with certain other clauses of the Act, and ss. 38—42, 45, and 46 of the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), are incorporated with the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), by s. 12 of that Act, subject as in that section mentioned. The incorporated clauses of the Acts of 1847 and 1871 are set out, together with part of s. 12 of the Act of 1882, in an Appendix to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19); and by s. 11 of the schedule to that Act, the provisions of the special Order as to works are to be in addition to, but subject to, those of the Electric Lighting Acts and the Acts incorporated therewith, and in particular those of the Act of 1847 with respect to breaking up streets. By s. 12 of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), the expressions "special Act," "undertakers," "gas," "pipe," "works," and "limits of the special Act" occurring in the incorporated clauses of the Gasworks Clauses Acts are to be construed as meaning respectively the Act of 1882, inclusive of any licence, Order, or special Act, the undertakers under the Act of 1882, electricity, electric line, "works," as defined by the Act of 1882, and area of supply of the undertakers under the Act of 1882; and (subject to an exception with reference to s. 40 of the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41)), offences, forfeitures, penalties, and damages under the incorporated clauses may be prosecuted and recovered in manner by the Gasworks Clauses Acts respectively enacted in relation thereto. For the definitions of "electricity," "electric line," and "works" in the Act of 1882, see p. 548, *ante*.

Subject to the provisions of s. 12 of the Act of 1882 the definitions in the Gasworks Clauses Acts (see Act of 1847, s. 3; Act of 1871, s. 4) appear to apply to the interpretation of the incorporated clauses though occurring in sections not incorporated (see *Portsmouth Corporation* v. *Smith* (1885), 10 App. Cas. 364, *per* Lord BLACKBURN, at p. 371; but see *Sale* v. *Phillips*, [1894] 1 Q. B. 349). The definitions are, however, of a formal character, except that of "street," which is in substance identical with that in the Act of 1882 (see p. 549, *ante*).

(*l*) See pp. 576 *et seq.*, *post*.

(*m*) The existence of this somewhat inapt provision is due to the circumstance that the legislation is by reference, as explained in note (*k*), *supra*.

(*n*) The words are "the powers hereby or by the special Act granted."

(*o*) Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 6, as applied (see note (*k*), *supra*). It seems that the compensation is assessable and recoverable before justices under the provisions of the Railways Clauses Consolidation Act,

SECT. 10. Works.

Undedicated streets.

The foregoing powers (*p*) do not, however, extend to the laying down or placing of any electric line or other works into, through, or against any building, or in any land, not dedicated to public use without the consent of the owners and occupiers thereof; except that the undertakers may at any time enter upon and lay or place any new electric line in the place of any existing electric line in any land wherein any electric line has been already lawfully laid down or placed under statutory authority, and may repair or alter any electric line so laid down (*q*).

Bridges.

The powers in question, though enabling the undertakers to place electric lines or other works in a road over a public bridge, even in such a position as to be in actual contact with the structure of the bridge itself (*r*), do not enable them to cut into the structure of the bridge (*s*); nor do they justify the undertakers in cutting into arches under a street used for cellarage (*t*).

Restrictions on exercise of powers for breaking up streets.

1135. The exercise by the undertakers of the powers above mentioned is subject to certain restrictions (*a*).

1845 (8 & 9 Vict. c. 20), incorporated with the Act of 1847 by s. 40 of that Act and applied, for the purposes of the provisions of that Act incorporated with the Electric Lighting Acts, by the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 12. See note (*g*), p. 610, *post*. In *Hornby* v. *Liverpool United Gas Light Co.* (1883), 47 J. P. 231, it was, however, assumed, though without argument on the point, that compensation under s. 6 of the Act of 1847 is, even in the case of a gas undertaking, recoverable as unliquidated damages in an action. And it was there held that the provisions of the section as to compensation rendered the defendants liable in damages for injury to a window done by a stone which one of their workmen caused to fly up when opening a street, even on the hypothesis that there had been no negligence on his part. In *Fletcher* v. *Birkenhead Corporation*, [1907] 1 K. B. 205, C. A., it was assumed that compensation under the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 12, which is silent as to the method in which the compensation is to be assessed, was assessable by arbitration, apparently under the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 68. But in that case the defendants' special Act (44 & 45 Vict. c. clii.), s. 2, incorporated the compulsory clauses of the Lands Clauses Acts generally, and not in the limited way in which those clauses are incorporated with the Electric Lighting Acts by the Electric Lighting Act, 1909 (9 Edw. 7 c. 34), s. 1. And s. 6 of the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), contains provisions (to which there is nothing to correspond in the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15)), as to the application of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), which might possibly be construed as rendering the machinery of that Act applicable with reference to compensation under s. 12 of the Waterworks Clauses Act, 1847.

(*p*) The words are "nothing herein" shall authorise the undertakers etc.

(*q*) Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 7, as applied (see note (*k*), p. 573, *ante*). For an instance in which the laying of pipes by a gas company over a bridge was held to be unauthorised because the road over the bridge was not a public highway, see *Taff Vale Rail. Co.* v. *Pontypridd Urban District Council* (1905), 69 J. P. 351. In *Selby* v. *Crystal Palace Gas Co.* (1862), 4 De G. F. & J. 246, C. A., an agreement entitling the occupiers of premises to the benefit of private roads as if they were public roads was held to give them power, as against the owner of the soil, to authorise a gas company to lay pipes in the roads for the purpose of supplying the occupiers with gas.

(*r*) *Taff Vale Rail. Co.* v. *Cardiff Gas Light and Coke Co.* (1907), 71 J. P. 350.

(*s*) See *Glasgow Corporation* v. *Glasgow and South Western Rail. Co.*, [1895] A. C. 376.

(*t*) *Thompson* v. *Sunderland Gas Co.* (1877), 2 Ex. D. 429, C. A.

(*a*) There are two sets of restrictions, one contained in the provisions of the

Works.

The undertakers must notify the persons under whose control the street, bridge, sewer, drain, or tunnel is, of their intentions. And (subject to provisions for cases of emergency) the work must be done according to a plan (which it is for the undertakers to submit, and which must afford proper information as to the depth etc. at which it is proposed to place the works (*b*)), approved by such persons, or, in case of dispute (arising from a counter proposal (*c*)), determined by justices; the persons in question are entitled to superintend the work; and an order of justices may be obtained requiring the undertakers to execute works for guarding against interruption of drainage during the execution of works interfering with sewers and drains (*d*).

Notice. Superintendence of work.

Works to prevent interruption of drainage.

They must, with all convenient speed, complete the work for which the street, bridge, sewer, drain or tunnel is broken up, and fill in the ground and reinstate and make good the road or pavement, or the sewer, drain or tunnel, and carry away the rubbish occasioned. They must, whilst a road or pavement is opened or broken up, cause it to be fenced and guarded, and duly lighted at night. And they must keep the road or pavement in good repair for three months after replacing it and making it good, and for such further time, if any, not exceeding twelve months in the whole, as the soil broken up continues to subside (*e*).

Reinstatement of street etc.

Their duty as regards the reinstatement of a street extends to taking steps, *e.g.*, by putting in concrete, to secure that the surface shall be as good as before the work was done, not only in the first instance, but as regards its capacity to remain good (*f*); and they may be liable for an accident due to subsidence which, though occurring after the expiry of their period of responsibility, is referable to their negligence in carrying out the work of reinstatement (*g*).

The observance of the foregoing restrictions and conditions by the undertakers is secured by penalties, and by provisions enabling the persons having control of the street, bridge, sewer, drain or

Penalties.

Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), incorporated with the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), as explained in note (*k*), p. 573, *ante*, and the other in the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19). The two sets of restrictions are not in all respects easily reconcilable with each other. For present purposes attention will be confined to the former; the latter are mentioned pp. 576 *et seq.*, *post*. See also title GAS. Special Acts, by which undertakings are authorised, frequently contain further restrictions, particularly in protective clauses inserted at the instance of particular county, borough, and district councils.

(*b*) See *East Molesey Local Board* v. *Lambeth Waterworks Co.*, [1892] 3 Ch. 289, C. A., following *Edgware Highway Board* v. *Colne Valley Water Co.* (1877), 46 L. J. (CH.) 889.

(*c*) *East Molesey Local Board* v. *Lambeth Waterworks Co.*, *supra*; compare *Montreal Municipality* v. *Standard Light and Power Co.* (1897), 66 L. J. (P. C.) 113.

(*d*) Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), ss. 8, 9, as applied. See note (*k*), p. 573, *ante*. See however, Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 14, cited in note (*f*), p. 578, *post*.

(*e*) Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 10, as applied. See note (*k*), p. 573, *ante*.

(*f*) *Commercial Gas Co.* v. *Poplar Borough Council* (1906), 94 L. T. 222.

(*g*) *Hartley* v. *Rochdale Corporation*, [1908] 2 K. B. 594.

SECT. 10. Works.

tunnel, to execute the work themselves at the expense of the undertakers in cases of delay or omission on the part of the latter (*h*).

Further powers and restrictions as to breaking up of streets etc.

1136. The undertakers are given certain further powers for interference with streets, and are placed under further restrictions with regard to the exercise of their powers of interference with streets, by provisions in the schedule to the Electric Lighting (Clauses) Act, 1899 (*i*).

Breaking up of streets, railways, and tramways.

1137. Subject to the provisions of the principal Act and the special Order, the undertakers may exercise all or any of the powers conferred on them by the principal Act and the special Order, and may break up such streets not repairable by the local authority (*k*), and such railways and tramways (if any) as they are specially authorised to break up by the special Order, so far as those streets, railways, and tramways may for the time being be included in the area of supply, and be or be upon land dedicated to public use; but as respects any railway, these powers extend only to such parts thereof as pass across or along any highway on the level (*l*). And where the Board of Trade give their consent (*m*) to the breaking up by the undertakers of any street not repairable by the local authority, or of any railway or tramway, which they are not specially authorised to break up by the special Order, the provisions of the special Order apply to the street, railway, or tramway to which the consent relates as if the undertakers had been specially authorised to break it up by that Order (*a*).

Street boxes.

1138. Subject to the provisions of the principal Act, the special Order, and the Board of Trade regulations, the undertakers are empowered to construct in streets (*b*) boxes, including ventilating

(*h*) Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), ss. 11, 12, as applied. See note (*k*), p. 573, *ante*. Their liabilities in penalties do not exempt the undertakers from liability at common law in damages in the case of an accident due to negligence on their part (see *Goodson* v. *Sunbury Gas Consumers' Co.* (1896), 75 L. T. 251; compare *Groves* v. *Wimborne* (*Lord*), [1898] 2 Q. B. 402, C. A.; *Dublin United Tramways Co., Ltd.* v. *Fitzgerald*, [1903] A. C. 99). As to the possibility of their being liable apart from negligence, see *Midwood & Co., Ltd.* v. *Manchester Corporation*, [1905] 2 K. B. 597, C. A., cited note (*d*), p. 564, *ante*; and the remarkable case of *Hornby* v. *Liverpool United Gas Light Co.* (1883), 47 J. P. 231, cited note (*o*), p. 573, *ante*.

(*i*) 62 & 63 Vict. c. 19. To some extent the provisions of the schedule to this Act cover over again ground covered by the Electric Lighting Acts and the incorporated enactments. By s. 1 of the schedule to the Act of 1899 the provisions of the schedule are to be construed subject to the provisions of the principal Act, that is to say, of the Electric Lighting Acts and the incorporated enactments; and by s. 11 of the schedule the provisions of the special Order as to works are to be in addition but subject to those of the principal Act, and in particular to those of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), with respect to breaking up streets (see note (*d*), p. 564, and note (*k*), p. 573, *ante*).

(*k*) See note (*s*), p. 570, *ante*.

(*l*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 12 (1). And see note (*t*), p. 571, *ante*.

(*m*) Under the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 13. See p. 571, *ante*.

(*a*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 12 (2).

(*b*) As the power is subject to the principal Act, it does not extend to breaking up, for the purpose of constructing boxes, streets which the undertakers are not otherwise authorised to break up.

apparatus (*c*), for purposes in connection with the supply of energy; but (save where the local authority are the undertakers) not above ground except with the consent of those by whom the street is repairable (*d*). And the undertakers are given certain rights, and subjected to certain obligations, as to the construction, maintenance, and use of such boxes (*e*).

Street Works.

1139. Where the exercise of any of the powers of the undertakers in relation to the execution of any works (including the construction of boxes) will involve the placing of any works in, under, along, or across any street or public bridge, provisions have effect of which the following is a summary:—

Notices.

The undertakers (except in the case of repairs, renewals, and amendments involving no alteration in the character or position of the works) must give notice of the proposed works to (1) the Postmaster-General; (2) the local authority, except where the local authority are themselves the undertakers, and except as regards streets and bridges repairable by the county council; and (3) the county council where the street or bridge is repairable by that council. Either the Postmaster-General or the local authority or county council, as the case may be, may disapprove of the proposals, in which case the undertakers may appeal to the Board of Trade. The works are not to be carried out without the approval (which, however, is to be deemed to be given in the absence of due intimation of disapproval) both of the Postmaster-General and of the local authority or county council, as the case may be, or the approval of the Board of Trade on appeal; but, with such approval, the works may be carried out subject to the principal Act and the special Order. Breach of these provisions subjects the undertakers to liabilities to pay compensation, and, subject to provisions for cases of emergency, to penalties. The provisions are subject to a saving

Approval required.

(*c*) Failure on the part of the undertakers to provide proper ventilation may be negligence on their part. See *Solomons* v. *Stepney Borough Council* (1905), 69 J. P. 360, with regard to which see note (*c*), p. 564, *ante*.

(*d*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 13 (1). And see note (*s*), p. 570, *ante*. The sub-section seems, though expressed as an enabling enactment, to be really restrictive. See *East London Waterworks Co.* v. *St. Matthew, Bethnal Green, Vestry* (1886), 17 Q. B. D. 475, C. A. Such a box, if constructed of bricks or similar materials, is a "building structure or work" in respect of which in London a building notice must be given under the London Building Act, 1894 (57 & 58 Vict. c. ccviii.), s. 145. See *County of London Electric Supply Co., Ltd.* v. *Perkins* (1908), 98 L. T. 870, following *Whitechapel Board of Works* v. *Crow* (1901), 84 L. T. 595, and *Charing Cross and Strand Electricity Supply Corporation* v. *Woodthorpe* (1903), 88 L. T. 772. Compare *Moran & Son, Ltd.* v. *Marsland*, [1909] 1 K. B. 744; *London County Council* v. *District Surveyors' Association and Willis*, [1909] 2 K. B. 138.

(*e*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 13 (2)—(4), under which it is, *inter alia*, made the undertakers' duty to maintain the boxes so as not to be a source of danger, whether by reason of inequality of surface or otherwise. The provision as to inequality of surface is doubtless intended to prevent the principle of *Moore* v. *Lambeth Waterworks Co.* (1886), 17 Q. B. D. 462, C. A., and *Thompson* v. *Brighton Corporation*, [1894] 1 Q. B. 332, C. A. (as to which see title HIGHWAYS, STREETS AND BRIDGES), from applying with reference to the boxes. Additional provisions as to the construction etc. of the boxes will be found in the Board of Trade regulations.

SECT. 10. Works.

for the liabilities of the undertakers should any telegraphic line of the Postmaster-General be injuriously affected (*f*).

Works affecting street not repairable by local authority or railway, tramway, or canal.

1140. Where the exercise of the powers of the undertakers in relation to the execution of any works will involve the placing of any works in, under, along, or across any street or part of a street not repairable by the local authority or by the county council, or over or under any railway, tramway, or canal, provisions have effect of which the following is a summary:—

Notice.

Conditions of exercise of powers.

The undertakers are (except in the case of repairs, renewals, and amendments involving no alteration in the character or position of the works) to notify the persons liable to repair the street (*g*), or entitled to work the railway or tramway, or the owners of the canal, as the case may be, of the proposed works. Thereupon the latter may require any question relating to the works or compensation in respect thereof to be settled by arbitration, in which case the question, unless settled by agreement, is to be determined by arbitration accordingly. In the absence of such requisition, or after the settlement of any question arising, as the case may be, the undertakers may, upon paying or securing any compensation required to be paid or secured, carry out the works subject to the principal Act and the special Order, in accordance with the proposals, or the agreement or the result of the arbitration, as the case may be. The works are to be carried out to the reasonable satisfaction of the persons in question. Where the repair, renewal, or amendment of existing works will involve interference with a railway or tramway, the undertakers, unless it is otherwise agreed, or in cases of emergency, must notify the persons entitled to work the railway or tramway; the work is to be done under the superintendence of the latter, through their officers, and their reasonable requirements are to be complied with. Breach of these provisions subjects the undertakers to liabilities to pay compensation, and, subject to provisions for cases of emergency, to penalties (*h*).

Power of street authority or railway or tramway company to carry out works on undertakers' behalf.

1141. Any body or person for the time being liable to repair any street or part of a street, or entitled to work any railway or tramway, which the undertakers are empowered to break up for the purposes of the special Order, may, if they think fit, serve a notice upon

(*f*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 14. The section is not, as regards the rights and powers of the local authority, expressly, nor apparently (notwithstanding the provisions of s. 15, as to which see *infra*) impliedly, confined to streets and bridges repairable by that authority. The provisions as to appeal to the Board of Trade are difficult to reconcile with those of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 9 (see p. 575, *ante*), under which disputes as to the method of carrying out works in streets are to be referred to justices; see note (*t*), p. 546, *ante;* note (*k*), p. 573, *ante*.

(*g*) See note (*s*), p. 570, *ante*.

(*h*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 15. The requirements of this section appear to be cumulative with those of s. 14, as to which see p. 577, *ante;* but no provision is made to meet the possibility of discrepancy between requirements under the two sections. There is the same difficulty in reconciling the provisions of s. 15 with those of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), as in the case of s. 14. See note (*f*), *supra*.

SECT. 10. Works.

the undertakers stating that they desire to exercise or discharge all or any part of any of the powers or duties of the undertakers as therein specified in relation to the breaking up, filling in, reinstating, or making good any streets, bridges, sewers, drains, tunnels, or other works vested in or under the control of that body or person, and may amend or revoke any such notice by another notice similarly served. Where such notice is given, provisions come into operation of which the effect, unless otherwise agreed, is, shortly, as follows:—

The undertakers, where occasion for the exercise of the specified powers arises, must, except in cases of emergency, serve a requisition upon the body or person giving the notice requiring them to exercise the powers. The latter may then exercise the powers. The undertakers are debarred, under penalties, from themselves exercising the powers except in cases of emergency or of failure on the part of the body or person giving the notice to exercise them. The expenses of the body or person giving the notice in complying with the undertakers' requisition are payable by the undertakers. And (save where the local authority are the undertakers) the undertakers may be required to give security for the payment of such expenses.

The above provisions, however, do not affect the rights of the undertakers to exercise or discharge any powers or duties conferred or imposed on them by the principal Act or the special Order in relation tothe execution of any works beyond the actual breaking up, filling in, reinstating, or making good any such street or part of a street, or any such bridges, sewers, drains, tunnels, or other works, or railway or tramway, as above mentioned (*i*).

Responsibility for negligence.

Where work is done under the foregoing powers by a body or person other than the undertakers, the responsibility for negligence in carrying it out rests with the former to the exclusion of the undertakers (*k*).

Alteration of position of pipes, wires etc. in streets.

1142. The undertakers are empowered to alter the position of any pipes (except, where the local authority are not themselves the undertakers, any pipe forming part of a sewer of the local authority), or any wires under any street or place authorised to be broken up by them, which may interfere with the exercise of their powers under the Electric Lighting Acts and the enactments incorporated therewith or the special Order; and any body or person may in like manner alter the position of any electric lines or works of the undertakers under any such street or place which may interfere with the lawful exercise of any powers vested in that body or person in relation to that street or place, subject (unless otherwise agreed) to provisions of which the following is a summary:—

Notice.

Before commencing the alterations the "operators" (*i.e.*, the body or person proposing to effect the alterations) are to notify the "owners" (*i.e.*, the body or person entitled to the pipes etc.

(*i*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 16.

(*k*) See *Cressy* v. *South Metropolitan Gas Co.* (1906), 94 L. T. 790; and compare *Barham* v. *Ipswich Dock Commissioners* (1885), 54 L. T. 23; *Howitt* v. *Nottingham and District Tramways Co., Ltd.* (1883), 12 Q. B. D. 16; *Alldred* v. *West Metropolitan Trams Co.*, [1891] 2 Q. B. 398, C. A.; *Barnett* v. *Poplar Corporation*, [1901] 2 K. B. 319.

SECT. 10. Works.

proposed to be altered) of the proposed alterations. The owners may then serve a requisition on the operators requiring any question relating to the works, or to compensation in respect thereof, to be settled by arbitration, whereupon the question, unless settled by agreement, is to be determined by arbitration accordingly. In the absence of such requisition, or after the determination of the questions raised by the requisition, if any, the operators, upon paying or securing any compensation they may be required to pay or secure, may carry out the works in accordance with the proposals or the agreement or the result of the arbitration, as the case may be, subject to the principal Act and the special Order. Before the operators are entitled to commence the alterations the owners may serve a statement on the operators that they desire to execute the alterations themselves. Where such a statement is served the operators, when the occasion arises for the execution of the alterations, must notify the owners requiring them to execute the alterations, whereupon they may execute them accordingly; the operators are debarred from executing the alterations themselves, except on default of the owners; and the operators must pay the expenses incurred by the owners in complying with the notification. Except where the local authority are the undertakers, the owners in the statement of their desire to execute the alterations themselves may require the operators to give security for payment of the expenses, in which case the operators cannot require the execution of the alterations until they have given such security. Breach of the provisions subjects the operators to liability to pay compensation, and, subject to a saving for cases of emergency, to penalties (*l*).

Responsibility for negligence.

The operators, to the exclusion of the owners, are liable for negligence in the execution of the work (*m*).

Laying of electric lines etc., near other apparatus.

1143. Where the undertakers require to dig or sink any trench for laying down or constructing any new lines (other than service

(*l*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 17. S. 15 of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), provides that, subject to the provisions of that Act and of the licence Order or special Act, and to any bye-laws made under the Act of 1882, the undertakers may alter the position of pipes or wires under streets or places authorised to be broken up by them which may interfere with their powers under the Act on previously making or securing such compensation to the owners of the pipes or wires, and on complying with such conditions as to the mode of making the alterations as may, before the commencement of the alterations, be agreed, or in case of difference determined in manner prescribed by the licence or Provisional Order, or where no such manner is prescribed by arbitration; and the section gives corresponding powers to any local or other public authority, company, or person to alter the position of electric lines or works of the undertakers. It will be seen that s. 17 of the schedule to the Act of 1899 in effect repeats s. 15 of the Act of 1882 in a more elaborate form, but omitting the reference to the bye-laws of the local authority. The omission is doubtless due to the circumstance that such bye-laws are not in practice made (see p. 546, *ante*). There appears to be no obligation on a local authority to exercise their power of altering the position of works of the undertakers in order to protect them from risk of injury to which they are exposed in consequence of alterations in a street, involving no direct interference with those works, carried out by the local authority under their statutory powers (see *Southwark and Vauxhall Water Co.* v. *Wandsworth Board of Works*, [1898] 2 Ch. 603, C. A.).

(*m*) See the cases cited note (*k*), p. 579, *ante*.

lines) or other works near to which any sewer, drain, watercourse, defence, or work under the jurisdiction or control of the local authority, or any main, pipe, syphon, electric line, or other work belonging to any gas, electric supply, or water company has been lawfully placed, or where any gas or water company require to dig or sink any trench for laying down or constructing any new mains or pipes (other than service pipes) or other works near to which any lines or works of the undertakers have been lawfully placed, the "operators" (*i.e.*, the undertakers or the gas or water company, as the case may be) must, unless it is otherwise agreed, or in case of sudden emergency, give due notice to the "owners" (*i.e.*, the local authority, gas company, electric supply company, water company, or undertakers, as the case may be). And the owners are entitled to superintend the work, and the operators must conform with any reasonable requirements made by the owners for protecting their works from injury, and for securing access thereto, and, if required by the owners, must repair any damage done thereto. Where the operators find it necessary to undermine but not to alter the position of any pipe, electric line, or work, they must temporarily support it in position during the execution of their works, and before completion provide a suitable and proper foundation for it where so undermined. Where the operators (being the undertakers) lay any electric line, crossing or liable to touch any mains, pipes, lines, or services belonging to any gas, electric supply, or water company, the conducting portion of the electric line must be effectively insulated in a manner approved by the Board of Trade; and the undertakers must not, except with the consent of the gas, electric supply, or water company, as the case may be, and of the Board of Trade, lay their electric lines so as to come in contact with any such mains, pipes, lines, or services, or, except with the like consent, employ any such mains, pipes, lines, or services for the purposes of their supply of energy. Differences arising under the foregoing provisions are to be determined by arbitration. The foregoing provisions so far as they refer to the local authority, and to sewers etc. under the jurisdiction or control of that authority, do not, however, apply where the local authority are themselves the undertakers.

Notice.

Conditions of exercise of powers.

Breach of the above requirements subjects the operators to liability to pay compensation, and—subject to savings for cases of emergency, and cases where the default was due to ignorance on the part of the operators of the position of the sewer etc. affected—to penalties.

For the purposes of the foregoing provisions "gas company," "water company," and "electric supply company" mean respectively any body or person lawfully supplying gas, any body or person lawfully supplying water or water power, and any body or person supplying energy in pursuance of the Electric Lighting Acts but not in pursuance of the special Order (*n*).

Definitions of "gas company," "water company," and "electric supply company."

(*n*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 18. In *Chepstow Electric Light and Power Co., Ltd.* v. *Chepstow Gas and Coke Consumers' Co., Ltd.*, [1905] 1 K. B. 198, the gas company, in October, 1903, pursuant to this section, required the electric light company, who were digging trenches for new electric works, to place their works at a greater distance from certain gas mains

SECT. 10. **Works.**

Injury to railway or canal.

1144. In the exercise of any of the powers of the special Order relating to the execution of works, the undertakers must not in any way injure the railways, tunnels, or works of any railway or canal company, nor obstruct or interfere with the working of the traffic along any railway or canal (*o*).

Works interfering with access to canal.

1145. If, after the undertakers have placed works in, upon, over, along or across a canal, any person having power in that behalf constructs a dock, basin, or work on land adjoining or near to the canal, but is prevented by the undertakers' works from forming a communication for the convenient passage of vessels with or without masts between the dock, basin, or work and the canal, or if the business of the dock, basin, or work is interfered with in consequence of the undertakers' works, then, subject to provisions for the settlement of disputes by arbitration, the undertakers, on the request of the person in question, and on being afforded reasonable facilities by him for placing works round the dock, basin, or other work under, in, upon, over, along, or across land belonging to or under his control, must remove and place their work accordingly (*p*).

Precautions as to telegraph and telephone lines.

1146. The undertakers are required to take all reasonable precautions in constructing their electric lines and other works, and in working their undertaking so as not injuriously to affect, whether by induction or otherwise, the working of any wire or line used for the purpose of telegraphic, telephonic, or electric signalling communication, or the currents in that wire or line.

In connection with these requirements provisions are made for the reference of questions arising between the undertakers and the owner of the wire or line to arbitration; for the giving of notice by the undertakers to such owner before commencing operations; and enabling the owner (subject to provisions for arbitration) to require the undertakers to adopt precautions specified by him.

than the electric light company proposed; but the latter refused so to do and constructed the work in accordance with their original proposals, finishing it on October 31st. The dispute between the companies went to arbitration, and the arbitrator, by an award dated February 12th, 1904, found that the electric works were in part in undue proximity to the gas mains, and awarded the gas company compensation. The gas company, after again calling on the electric light company to comply with their requirements, which the latter failed to do, commenced summary proceedings against them on May 31st, for that they "on and since October 2, 1903," had made default in complying with the section in that they had laid their works in undue proximity to the gas mains and had failed to conform to the gas company's requirements. And the justices convicted the electric light company, inflicting a fine of £1, and a daily penalty during default of £1. It was held (1) that the proceedings were not out of time under the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11, as not commenced within six months of the complaint, since if that section applied (and *semble*, that the offence being in the nature of disobedience to an order it did not) time did not run from the date of the requirement, but from the time when the offence could be said to be complete, which, under the circumstances, was not until within six months of the commencement of the proceedings; (2) that the arbitrator's award was no bar to the proceedings; and (3) that, though the part of the conviction inflicting a daily penalty prospectively was bad, the conviction for the main offence was good and could stand.

(*o*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 19.
(*p*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 16.

Liability of undertakers.

Breach of the foregoing requirements subjects the undertakers to liability to pay compensation, and (subject to savings for cases of emergency and of ignorance on the undertakers' part of the position of the wire or line affected) to penalties. The provisions in question do not deprive any owner of any existing rights to proceed against the undertakers by indictment, action, or otherwise, in relation to any of the matters to which such provisions relate (*a*).

Tramway etc. legislation affecting undertakers.

1147. Save in the case of tramway undertakings, and light railway undertakings in the nature of tramway undertakings (*b*), the

(*a*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 20. The section imposes upon the undertakers a responsibility for effects of a purely electrical, as distinguished from a tangibly physical, character produced by their operations. The question of responsibility at common law for effects of a purely electrical character due to the employment of electricity has been considered in two reported cases. In *National Telephone Co.* v. *Baker*, [1893] 2 Ch. 186, KEKEWICH, J., expressed the opinion that the defendant, who was carrying on (on behalf of the local authority) an electrical tramway undertaking authorised by Provisional Order duly confirmed, would, but for the Provisional Order, have been liable, on the principle of *Rylands* v. *Fletcher* (1868), L. R. 3 H. L. 330, for interference with the working of the plaintiff company's telephonic system due to electrical conditions set up by the working of the tramway; but he held that the defendant was protected by the Provisional Order, which contained no clause preserving the promoters' liability for nuisance. In *Eastern and South African Telegraph Co., Ltd.* v. *Cape Town Tramways Co., Ltd.*, [1902] A. C. 381, P. C., it was held by the Privy Council that, although the principle of *Rylands* v. *Fletcher*, *supra*, applies with reference to injury due to electric current, yet that principle is inapplicable in a case where the injury is done to a particular trade apparatus unnecessarily so constructed as to be affected by minute currents, and, for that reason, that the defendants were not liable at common law for disturbances caused by the working of the tramways, and affecting the working of the plaintiffs' submarine cable, so long as, but only so long as, the plaintiffs failed to adopt certain precautions. It was also held that the defendants were not liable, as regards a section of the tramways worked under statutes imposing on them a responsibility in the event of an "electric leak" taking place, since the passage through the earth of the electric currents which had affected the plaintiffs' cable was a natural incident of the authorised system of working the tramways and not due to a "leak" within the meaning of the material statutes. See also *Midwood & Co., Ltd.* v. *Manchester Corporation*, [1905] 2 K. B. 597, C. A., and p. 564, *ante*.

(*b*) Under the Tramways Act, 1870 (33 & 34 Vict. c. 78), the tramway promoters have certain powers for altering the position of, *inter alia*, any tubes, wires, or apparatus for telegraphic or other purposes (*ibid.*, s. 30; and see *Re Rhondda Urban District Council and Taff Vale Rail. Co.* (1907), 97 L. T. 892, C. A.); and there can be no doubt that wires and apparatus of undertakers under the Electric Lighting Acts are within these powers. And it seems to be optional with the promoters, in cases coming both within these powers and within the powers conferred on them by the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 15, and the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 17 (see pp. 579, 580, *ante*), to avail themselves of the former or the latter powers. It is a principle that in cases of doubt a body invested with alternative statutory powers are to be deemed to have exercised the power which is more beneficial to themselves: see *The Ettrick* (1881), 6 P. D. 127, C. A.; *Fulham Vestry* v. *Minter*, [1901] 1 K. B. 501, *per* PHILLIMORE, J., at p. 513 (overruled on another point in *London County Council* v. *Wandsworth Borough Council*, [1903] 1 K. B. 797, C. A.).

Orders under the Light Railways Act, 1896 (59 & 60 Vict. c. 48), authorising light railways in the nature of street tramways always, or almost always, contain clauses similar to s. 30 of the Tramways Act, 1870 (33 & 34 Vict. c. 78); but, usually at least, works the position of which may be altered under s. 15 of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), are excepted from the clause.

The Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 32 (as to the construction of

SECT. 10. **Works.**

powers and duties of the undertakers in relation to works of other bodies and persons, and of the latter in relation to works of the undertakers, are seldom the subject of express legislation other than that contained in the Electric Lighting Acts and the Electric Lighting (Clauses) Act, 1899 (*c*).

Injury to undertakers' works by traffic.

1148. If the wires and apparatus of the undertakers properly laid in a highway are injured by traffic of excessive weight on the highway the undertakers have a cause of action against those responsible for the conduct of the traffic; and they have a similar cause of action in case of injury due to negligence on the part of the highway authority in repairing the highway (*d*).

which see *Re Bristol Gas Co. and Bristol Tramways and Carriage Co., Ltd.*, [1909] 2 K. B. 297, C. A.), contains a saving for the powers of, *inter alia*, any company etc. to lay down, alter, or remove any tubes, wires, or apparatus for telegraphic or other purposes—an expression that would include wires etc. of undertakers under the Electric Lighting Acts—but provides (subject to a proviso under which in certain cases increased expense entailed on the company etc. by the existence of the tramway is to be borne by the promoters) that in the exercise of such powers the company etc. shall be subject to certain restrictions. And there can apparently be no doubt that these restrictions apply in addition to those of the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, ss. 15, 16 (see pp. 578, 579, *ante*), where the powers of the electrical undertakers were obtained before those of the tramway promoters; but it is questionable whether they apply in the converse case.

Orders under the Light Railways Act, 1896 (59 & 60 Vict. c. 48), authorising light railways in the nature of street tramways generally, if not always, contain clauses similar to s. 32 of the Tramways Act, 1870 (33 & 34 Vict. c. 78).

See, further, title TRAMWAYS AND LIGHT RAILWAYS.

(*c*) The Gasworks Clauses Acts and Waterworks Clauses Acts do not refer to electric wires or apparatus as such; and, save possibly in very exceptional cases, the powers given by those Acts for interference with streets, bridges, sewers, drains, and tunnels (see Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), ss. 6—12; Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 28—34) would hardly justify interference with apparatus or works of undertakers under the Electric Lighting Acts. And it is very exceptionally, if ever, that provisions giving powers for interference with such works are to be found in special Acts or Orders authorising gas or water undertakings. It is not the practice to insert savings for the powers of undertakers under the Electric Lighting Acts in such special Acts and Orders, as it is considered that the legislation in the Electric Lighting Acts and the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), or its equivalent, with regard to gas and water undertakings, is equally applicable whether the gas or water undertaking is authorised by legislation of earlier or of later date than that authorising the electric undertaking.

The Telegraph Acts, 1863 to 1909 (as to which see title TELEGRAPHS AND TELEPHONES) do not expressly authorise interference by the Postmaster-General with apparatus other than gas and water pipes; and the general powers of these Acts for placing apparatus in streets and roads would apparently hardly ever, if ever, justify any interference with apparatus of undertakers under the Electric Lighting Acts. As to the application of the restrictions in the Telegraph Acts on works involving interference with those of the Postmaster-General to undertakers under the Electric Lighting Acts, see p. 572, *ante*.

(*d*) See *Gas Light and Coke Co.* v. *St. Mary Abbott's, Kensington, Vestry* (1885), 15 Q. B. D. 1, C. A.; *Chichester Corporation* v. *Foster*, [1906] 1 K. B. 167; and see the Irish cases of *Armagh Union* v. *Bell*, [1900] 2 I. R. 371; *Alliance and Dublin Consumers Gas Co.* v. *Dublin County Council*, [1901] 1 I. R. 492. See further, title HIGHWAYS, STREETS AND BRIDGES. Clauses for the protection of particular local authorities inserted in special Acts not infrequently contain express provisions as to the responsibility of the local authority for injury

Rights of support.

1149. Subject to the special provisions with regard to mines and minerals mentioned below, the undertakers are entitled to subjacent support for their works, and their right to such support is a subject-matter for compensation (*e*), but under what circumstances, if any, they are similarly entitled to lateral support for their works and liable to pay compensation in respect thereof is uncertain (*f*).

Nothing in the Electric Lighting Act, 1882, is, however, to limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any electric line is laid to work such mines or minerals (*g*). And the undertakers therefore, it seems, cannot, in the absence of special rights acquired by them, complain of the withdrawal of support from such works by the working of the mines and minerals (*h*).

Where (except in London) a local authority are the undertakers their rights in relation to mines and minerals as regards support for their works, including buildings on their own land, are, it seems, in general regulated by the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883 (*i*).

to works of the undertakers caused in the course of highway repair, see, *e.g.*, 1 Edw. 7, c. civ., s. 46 (7); 6 Edw. 7, c. xcii., ss. 81 (3), 86 (6).

(*e*) Under the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 17 (see p. 561, *ante*), or the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 6, as incorporated with the Act of 1882 (see p. 573, *ante*).

(*f*) See *Re Dudley Corporation* (1881), 8 Q. B. D. 86, C. A.; *Normanton Gas Co.* v. *Pope* (1883), 52 L. J. (Q. B.) 629, C. A.; *London and North Western Rail. Co.* v. *Evans*, [1893] 1 Ch. 16, C. A. See title EASEMENTS AND PROFITS À PRENDRE, Vol. XI., pp. 319—326.

(*g*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 33.

(*h*) In *Re Dudley Corporation*, *supra*, the saving for mines in s. 334 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), was held not to prevent a local authority from being entitled to support for their sewers as against mine owners; but s. 33 of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), would not appear susceptible of a construction similar to that placed in that case on s. 334 of the Act of 1875.

(*i*) 46 & 47 Vict. c. 37. The Act applies to any "sanitary work," an expression defined as meaning any existing or future building or work constructed by or vested in or under the control of a local authority—*i.e.*, a local authority within the meaning of the Public Health Acts—"under the powers or for the purposes of so much of" the Public Health Act, 1875, or "any general or local Act or Provisional Order as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting, or water supply," and as including any "fixtures, pipes, fittings, or apparatus connected with any such work, and belonging to or leased by the local authority" (*ibid.*, s. 2). And though the Electric Lighting Acts contemplate the supply of electricity not only for lighting but for other purposes, there can be little doubt that the works and apparatus of a local authority carrying on an electric undertaking fall within the definition, at any rate so far as their substantial purpose is the supply of electricity for lighting; but there may be doubt as to whether works and apparatus the substantial purpose of which is the supply of electricity for power could be brought within the definition. The Act is not to "repeal, invalidate, or affect" any express enactment with respect to rights of support for sanitary works (*ibid.*, s. 5); but s. 33 of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), cited *supra*, note (*g*), would not appear to be such an enactment. See also as to the Act of 1883, and the "mining code" of the Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17, ss. 18—27), which it extends, with modifications, to the works to which it applies, title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 49—55.

SECT. 11. SECT. 11.—*Compulsory Works.*

Compulsory Works.

Obligations to lay distributing mains.

1150. The undertakers must lay down within two years after the commencement of the special Order, and thereafter maintain, distributing mains for the purposes of general supply throughout every street or part of a street specified in that behalf in the special Order (*k*).

Additional distributing mains.

They must also, at any time after the expiration of eighteen months after the commencement of the special Order, lay down distributing mains for the purposes of general supply throughout every other street or part of a street within the area of supply, upon being required to do so in manner provided by the special Order. The mains (unless already laid down) are to be laid down within six months after the requisition has become binding on the undertakers or within such further time as may be approved by the Board of Trade. If the requisition is in respect of a street not repairable by the local authority, which the undertakers are not specially authorised to break up by the special Order, they must (unless the authority or person by whom the street is repairable (*l*) consent to its being broken up) apply under s. 13 of the Electric Lighting Act, 1882 (*m*), for the consent of the Board of Trade empowering them to break up the street, and the requisition is not binding if such consent is withheld (*n*).

Obligations where line laid for supply of particular consumer.

1151. The undertakers (unless themselves the local authority) must, at least twenty-eight days before commencing to lay in any street an electric line intended for supplying a particular consumer, and not for purposes of general supply, give certain notices of their intention, and if within that period any two or more of the owners or occupiers of premises abutting on so much of the street as lies between the points of origin and termination of the line duly require a supply for those premises, the necessary distributing main is to be laid by the undertakers at the same time as the electric line for the particular consumer (*o*).

Default in laying distributing mains.

1152. Default in laying down any distributing main within the prescribed period renders the undertakers (unless they are the local authority) liable to penalties. And in the case of such default, whether the local authority are the undertakers or not, the Board of Trade may (though in the case of undertakers other than the local authority only if the default is in the Board's opinion wilful and unreasonably prolonged and after considering any representations of the local authority) revoke the special Order as to the whole or (subject to provisions enabling the undertakers to insist that if the Order is revoked, the revocation shall extend to the

(*k*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 21 (1). It is the practice to schedule to the Provisional Order the streets and parts of streets in which distributing mains are to be laid under this section.

(*l*) See note (*s*), p. 570, *ante*.

(*m*) 45 & 46 Vict. c. 56, s. 13; see pp. 570, 571, *ante*.

(*n*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 21 (2), (3).

(*o*) *Ibid.*, s. 22. The notices must be served upon the local authority, and upon the owner and occupier of all premises abutting on so much of the street as lies between the points of origin and termination of the line to be laid (*ibid.*).

whole area) any part of the area of supply, or, if the undertakers so desire, may suffer the Order to remain in force as to that area or part thereof subject to such conditions as they think fit to impose; and such conditions are to bind the undertakers and have effect as if contained in the special Order (*a*).

Requisition for laying of distributing main.

1153. Any requisition requiring the undertakers to lay down distributing mains for the purposes of general supply throughout any street or part of a street may be made by six or more owners or occupiers of premises along that street or part of a street, or, where the local authority are not themselves the undertakers and have the control and management of the public lamps in that street or part of a street, by the local authority. The requisition must be signed by the persons making it, or by the local authority (*b*), as the case may be, and served on the undertakers. The undertakers are to keep and supply free of charge forms of requisition, and requisitions so supplied are to be deemed valid in point of form (*c*).

Undertakers may require contract to take supply.

1154. In the case of a requisition by owners or occupiers the undertakers, by notice (the time for giving which is extended in cases where there is an appeal to the Board of Trade under the provisions referred to below) served on the signatories of the requisition, may decline to be bound by the requisition unless the signatories, or some of them, will bind themselves to take or guarantee the taking of a supply of energy from the undertakers; and in that case the requisition will not bind the undertakers unless, within a limited time, an agreement executed by the signatories or some of them binding them to take or guaranteeing the taking of a supply is tendered to the undertakers and (if the undertakers by their notice so require) sufficient security for the payment of moneys accruing due under the agreement is, within the same time, offered to them. Subject to the provisions for appeal to the Board of Trade mentioned below, the agreement on which the undertakers may thus insist as a condition of their being bound by the requisition is an agreement for the taking of a supply of energy for three years at least of an aggregate amount which (at their charges for the time being to ordinary consumers) will provide annually such reasonable sum (not, without authority from the Board of Trade, exceeding 20 per cent. on the expense of providing and laying down the required distributing mains and any other mains or additions to existing mains which may be necessary for the purpose of connecting those distributing mains with the nearest available source of supply) as is specified in the undertakers' notice.

Appeal with regard to requisition.

If the undertakers consider that the requisition is unreasonable, or that, under the circumstances of the case, the provisions above referred to ought to be varied, they may appeal to the Board of Trade, who may either declare the requisition not binding on the

(*a*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 23. As to revocation of the Order, see further, p. 603, *post*.

(*b*) Signature by the local authority no doubt means signature by a person whose signature is sufficient to authenticate a document issued by the local authority; see p. 608, *post*.

(*c*) Electric Lighting (Clauses) Act (62 & 63 Vict. c. 19), schedule, s. 24.

SECT. 11. Compulsory Works.

undertakers, or authorise the undertakers to insist upon a more onerous agreement on the part of the signatories (*d*).

Arbitration as to requisition.

Any difference between the undertakers and the signatories as to any such notice or agreement as above mentioned is, subject to the provisions above referred to, and to the decision of the Board of Trade upon any such appeal as above mentioned, to be determined by arbitration (*e*).

Contract in case of requisition by local authority.

1155. Where the requisition is made by the local authority it is not binding on the undertakers unless at, or within a limited period after, the time of the service of the requisition there is tendered to the undertakers (if required by them) an agreement executed by the local authority binding them to take for three years at least a supply of energy for lighting such public lamps in the street or part of a street in question as may be under their management or control (*f*).

SECT. 12.—*Supply of Electricity within the Area of Supply: Price.*

Supply by agreement.

1156. The undertakers have a general power to supply electricity within the area of supply by agreement (*g*).

Right to supply on equal terms with other consumers.

Where, however, a supply of electricity is provided in any part of an area for private purposes, then, except in so far as is otherwise provided by the special Order (*h*), every company or

(*d*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 25.

(*e*) *Ibid.*, s. 25 (5).

(*f*) *Ibid.*, s. 26.

(*g*) The schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), recognises that, besides supplying, upon the terms laid down in the special Order, persons entitled by that Order to demand a supply, the undertakers may supply particular consumers under "special agreement" (see, *e.g.*, the definition of "general supply" (in *ibid.*, s. 1) quoted p. 550, *ante*). The power to make such special agreements is probably best regarded as derived from s. 10 of the Electric Lighti ¤ g Act, 1882 (45 & 46 Vict. c. 56); see *Morris and Bastert Ltd.* v. *Loughborough Corporation*, [1908] 1 K. B. 205, C. A., *per* Lord ALVER, STONE, C.J., at p. 216. The view apparently taken by BUCKLEY, L.J., in that case, that the contract in question was to be regarded as made under an enactment in the special Act of the corporation equivalent to s. 33 of the schedule to the Act of 1899 (as to which see p. 594, *post*), seems to have been a misapprehe nsion, since that enactment is concerned with agreements as to the price to be charged for a supply only, and is probably intended to apply only to ordinary consumers.

No clearly defined line appears, however, to be drawn in the legislation between a supply to a consumer entitled to a supply and the relations between whom and the undertakers depend mainly, if not entirely, on the enactments entitling the consumer to the supply (see *Re Richmond Gas Co. and Richmond (Surrey) Corporation*, [1893] 1 Q. B. 56) on the one hand, and a supply by agreement to a consumer whose relations with the undertakers are, mainly at least, contractual, on the other (see also titles GAS; TELEGRAPHS AND TELEPHONES). For some purposes consumers of both classes are treated by the legislature as being supplied by agreement. See further note (*k*), p. 589, *post*.

For decisions on the construction of particular contracts for the supply of electricity, see *London Electric Supply Corporation, Ltd.* v. *Priddis* (1901), 18 T. L. R. 64, where the defendant was held liable for a minimum charge notwithstanding his having consumed no electricity; and *London Electric Supply Corporation* v. *Brickwell* (1902), *Times*, February 24th, which related to the liability for electricity consumed after the premises had been sublet.

(*h*) The words are "by the terms of the licence, Order, or special Act authorising such supply."

person within that part of the area is, on application, entitled to a supply on the same terms on which any other company or person in such part of the area is entitled under similar circumstances to a corresponding supply (*i*).

Equality of charges.

And the undertakers must not, in making agreements for a supply of electricity, show any undue preference to any local authority, company, or person; but, subject to this restriction (*j*), they may make such charges for the supply of electricity as may be agreed upon, not exceeding the limits of price imposed by or pursuant to the special Order (*k*).

These restrictions are, however, not necessarily contravened by differentiation between the rates charged to different consumers, since diversity in circumstances such as the amount of energy consumed, the expense of furnishing the supply, the uniformity of the demand, and the time of day when the consumption takes place, may justify differentiation in the rates charged (*l*).

Control over use of electricity by consumer.

Again, the undertakers are not entitled to prescribe any special form of lamp or burner to be used by any consumer, or in any way to control or interfere with the manner in which electricity supplied by them under the Electric Lighting Acts and the special Order (*m*) is used. But no consumer may use any form of lamp or burner or use the electricity supplied for any purposes, or deal with it in any manner so as unduly or improperly to interfere with the supply to other consumers. And any dispute between the undertakers and a

Interference with supply to other consumers.

(*i*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 19. See further note (*k*), *infra*.

(*j*) The words are "save as aforesaid."

(*k*) *Ibid.*, s. 20, referring to "the limits of price imposed by or in pursuance of the licence, Order, or special Act authorising" the undertakers "to supply electricity." Refusal on the undertakers' part to furnish a supply of electricity to a person entitled to demand it under s. 19 of the Act of 1882, upon terms in conformity with that section and s. 20, would give that person a cause of action against the undertakers: see *Crouch* v. *Great Northern Rail. Co.* (1854), 9 Exch. 556. And were the supply furnished at charges exceeding such as were legitimate under the sections the consumer, if he had paid under protest or without knowledge of the material circumstances, could recover back the excess (see *Great Western Rail. Co.* v. *Sutton* (1869), L. R. 4 H. L. 226; *London and North Western Rail. Co.* v. *Evershed* (1878), 3 App. Cas. 1029; *Denaby Main Colliery Co.* v. *Manchester, Sheffield and Lincolnshire Rail. Co.* (1885), 11 App. Cas. 97).

There can be little doubt that ss. 19 and 20 of the Act of 1882 extend to the supply to the ordinary consumer as well as to supply by special agreement. S. 19 is not in terms confined to a supply by agreement; and a supply to an ordinary consumer is probably given under "agreement" within the meaning of s. 20; see note (*g*), p. 588, *ante*. S. 31 of the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), authorises the undertakers to "charge for energy supplied by them to any ordinary consumer (otherwise than by agreement)" in certain methods; but even if the words "otherwise than by agreement" are to be read with "supplied" and not, as is probably the true construction, with "charge," the supply might still be by virtue of an "agreement" within the meaning of s. 20 of the Act of 1882. In *Metropolitan Electric Supply Co., Ltd.* v. *Ginder*, [1901] 2 Ch. 799, BUCKLEY, J., appears to have regarded ss. 19 and 20 of the Act of 1882 as of quite general operation.

(*l*) *Metropolitan Electric Supply Co., Ltd.* v. *Ginder, supra*. Compare the cases as to undue preference in connection with railway rates, as to which see title RAILWAYS AND CANALS.

(*m*) The words are "any licence, Order, or special Act."

SECT. 12. **Supply of Electricity etc.**

consumer as to the matters above mentioned is to be determined by arbitration (*n*).

Supply to premises having separate supply.

On the other hand, a person is not entitled to demand or to continue to receive from the undertakers a supply of electricity for any premises having a separate supply, unless he has agreed with the undertakers to pay to them such minimum annual sum (to be determined by arbitration in default of agreement) as will give them a reasonable return on the capital expenditure, and will cover other standing charges incurred by them in order to meet the possible maximum demand for those premises (*o*).

Supply to consumers in arrear with payments.

And the undertakers may refuse to supply energy to any person whose payments for the supply of energy are for the time being in arrear (not being the subject of a *bonâ fide* dispute), whether any such payments be due to the undertakers in respect of a supply to the premises in respect of which such supply is demanded or in respect of other premises (*p*).

Obligation on undertakers to furnish supply.

1157. Subject to the foregoing restrictions and conditions, the obligations of the undertakers as to supplying electricity, and their powers to charge for the supply, are as follows:—

The undertakers must, upon the request of the owner or occupier of any premises within fifty yards (*q*) from any distributing main of theirs in which they are, for the time being, required to maintain or are maintaining a supply of energy for the purposes of general supply to private consumers under the special Order or the Board of Trade regulations, give and continue to give a supply of energy for those premises in accordance with the provisions of the special Order and of those regulations; and they must furnish and lay any electric lines necessary for supplying the maximum power to which the owner or occupier is entitled under the special Order (*r*), subject to conditions to the following effect:—

Cost of necessary lines.

The cost of so much of any electric line for the supply as is laid upon the property belonging to the owner or in the possession of the occupier, and of so much of any such electric lines as it is necessary to lay for more than sixty feet from any distributing main of the undertakers, although not on that property, must, if the undertakers so require, be defrayed by the owner or occupier (*s*).

Conditions of right to supply.

Every owner or occupier requiring a supply must—first, serve due notice upon the undertakers; secondly, if required by the

(*n*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 18.

(*o*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 15. Clauses to a similar effect are contained in many local Acts, and in many recent Provisional Orders.

(*p*) *Ibid.*, s. 18. Clauses to a similar effect, frequently, however, not containing an exception with regard to *bonâ fide* disputes, are contained in many local Acts and recent Provisional Orders.

(*q*) Measured in a straight line on a horizontal plane (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 34); and see *Mouflet* v. *Cole* (1872), L. R. 8 Exch. 32, Ex. Ch.

(*r*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 27 (1). The obligation probably extends to supplying electricity to the whole of premises any part of which is within the fifty yards. But see *Hunter District Water Supply and Sewerage Board* v. *Newcastle Coal Co.*, [1896] A. C. 82, P. C.

(*s*) *Ibid.*

undertakers, enter into a written contract with them to continue to receive and pay for a supply of energy for at least two years of such an amount that the payment to be made for the supply at the undertakers' then rates of charge to ordinary consumers shall not be less than 20 per cent. per annum on the outlay of the undertakers in providing any electric lines required as above stated to be provided by them for the purpose of the supply, and, if required by the undertakers, give them security for payment to them of all moneys which may become due to them by the owner or occupier in respect of any electric lines to be furnished by the undertakers, and in respect of energy to be supplied by them (*t*).

Undertakers may require security.

The undertakers are empowered, after having given a supply, to require security for payments that may become due to them in respect thereof, if security has not previously been given, or the security previously given has become invalid or insufficient, and to discontinue the supply if and so long as the security so required is not given (*u*).

Improper use of energy by consumer.

If the owner or occupier of the premises uses any form of lamp or burner, or uses the energy supplied to him for any purpose, or deals with it in any manner so as to interfere unduly or improperly with the efficient supply of energy to any other body or person by the undertakers, the undertakers may, if they think fit, discontinue to supply energy to those premises so long as the lamp or burner is so used, or the energy is so used or dealt with (*x*). Any difference arising under this provision as to any improper use of energy is to be determined by arbitration (*a*).

Condition of electric lines etc. on consumer's premises.

The undertakers are not to be compelled to give a supply of energy to any premises unless they are reasonably satisfied that the electric lines, fittings, and apparatus therein are in good order and condition, and not calculated to affect injuriously the use of energy by the undertakers or by other persons (*b*). Any difference arising under this provision as to any alleged defect in any electric lines, fittings, or apparatus is to be determined by arbitration (*c*).

Maximum power.

1158. The maximum power with which any consumer is entitled to be supplied is such amount as he may require to be supplied with, not exceeding what may be reasonably anticipated as the maximum consumption on his premises. But where any consumer

(*t*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 27 (2). And see, as to the necessity of compliance with the section before a person can claim a right to a supply, *Husey* v. *London Electric Supply Corporation*, [1902] 1 Ch. 411, C. A.

(*u*) *Ibid.*, s. 27 (3).

(*x*) *Ibid.*, s. 27 (4). The words of the sub-section are, "Provided also that if the owner or occupier of any such premises as aforesaid" uses any lamps etc. The initial words appear to restrict the application of the sub-section to cases where the undertakers are, or at least may be, required to supply the premises under the earlier provisions of the section.

(*a*) *Ibid.*, s. 27 (6).

(*b*) *Ibid.*, s. 27 (5). The sub-section is enacted as a proviso, and may therefore apply only with reference to the obligations imposed by the section. Provisions with regard to the refusal or discontinuance of a supply in cases where leakage on the consumer's premises is anticipated or discovered will be found in the Board of Trade regulations.

(*c*) *Ibid.*, s. 27 (6).

SECT. 12. Supply of Electricity etc.

has required the undertakers to supply him with a maximum power of any specified amount, he is not entitled to alter that maximum except upon one month's notice to the undertakers, and provision is made for payment in that case by the consumer of expenses reasonably incurred by the undertakers in consequence of the alteration. Differences between any such owner or occupier and the undertakers as to what may be reasonably anticipated as the consumption on his premises, or as to the reasonableness of any expenses under the above provisions, are to be determined by arbitration (*d*).

Obligation to supply public lamps.

1159. Undertakers, other than the local authority, may be required by the local authority to supply energy to public lamps within seventy-five yards from any distributing main of the undertakers in which they are required to maintain a current for the purposes of general supply (*e*).

Default in furnishing supply.

1160. The observance of the obligations to supply energy imposed by the special Order is secured by penalties, subject to a provision that no penalty is to be inflicted in respect of any default if the court are of opinion that the default was caused by inevitable accident or *force majeure*, or was of so slight or unimportant a character as not materially to affect the value of the supply, and subject to a limitation on the aggregate penalties that may be inflicted for defaults other than wilful defaults for any one day (*f*).

The liability in penalties prevents the undertakers from being liable in an action for damages in respect of a breach of the obligations in question (*g*), though it apparently does not prevent their being restrained by injunction from wrongfully discontinuing a supply which they are furnishing in pursuance of those obligations (*h*). But it does not prevent them from being liable in damages in respect of breach of a special contract to supply electricity (*i*). And it seems that there may be cases where a breach of the obligations in question would also constitute a breach of the general

(*d*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 28.

(*e*) *Ibid.*, s. 29. There is no express provision as to the body by whom or at whose cost the line to connect the lamps with the main is to be laid. The section does not appear to confer power to lay the line through intervening land; and (even assuming the duty of laying the line to be on them) the undertakers will incur no penalty for failure to supply electricity to a public lamp if, in a case where they have no power to lay the line *aliunde*, the intervening landowner objects to their so doing (see *Bellamy* v. *Liverpool United Gas Light Co.* (1904), 68 J. P. 540).

(*f*) *Ibid.*, s. 30.

(*g*) See *Atkinson* v. *Newcastle and Gateshead Waterworks Co.* (1877), 2 Ex. D. 441, C. A.; *Saunders* v. *Holborn District Board of Works*, [1895] 1 Q. B. 64; *Clegg, Parkinson & Co.* v. *Earby Gas Co.*, [1896] 1 Q. B. 592. And as to the general principles with regard to the question whether a statutory remedy is an exclusive remedy, see title STATUTES.

(*h*) See *Hayward* v. *East London Waterworks Co.* (1884), 28 Ch. D. 138; and for injunctions generally, see title INJUNCTIONS.

(*i*) *Morris and Bastert, Ltd.* v. *Loughborough Corporation*, [1908], 1 K. B. 205, C. A.; followed by RIDLEY, J., in *Bourne* v. *Marylebone Borough Council* (1908), 72 J. P. 129; reversed on another point, 72 J. P. 306, C. A.

obligations of the Electric Lighting Act, 1882 (*k*), which are not secured by penalty, and expose the undertakers to a liability in an action accordingly (*l*).

Obligations as to supply under Board of Trade regulations.

1161. Obligations on the undertakers, in addition to those already mentioned, with regard to the supply of electricity, more particularly in reference to constancy of supply and its uniformity in the matter of pressure, and, where alternating current is employed, of frequency, will be found in the Board of Trade regulations for insuring a proper and sufficient supply of electrical energy applicable to the undertaking (*m*).

Methods of charge.

1162. The undertakers may charge for energy supplied to any ordinary consumer (otherwise than by agreement) (*n*)—

(1) By the actual amount of energy supplied; or

(2) By the electrical quantity contained in the supply; or

(3) By such other method as may for the time being be approved by the Board of Trade (*a*).

Where, however, the undertakers charge by the last-mentioned method, any consumer who objects to that method may require the undertakers to charge him, at their option, by one of the first two methods (*b*).

Method to be notified.

Before commencing to supply energy through any distributing main for the purposes of general supply, the undertakers must notify by what method they propose to charge for energy supplied through that main; and they must not change the method notified except after notification of the change (*c*).

Maximum prices.

The prices to be charged must not exceed those stated in the special Order (*d*), or substituted for those so stated as explained below, or, in the case of a method of charge approved by the Board

(*k*) 45 & 46 Vict. c. 56, s. 19. See pp. 588, 589, *ante*.

(*l*) See note (*k*), p. 589, *ante*.

(*m*) See p. 545, *ante*.

(*n*) There is no definition of "ordinary consumer." The words "otherwise than by agreement" are probably to be read with "charge" rather than "supply," seeing that it is contemplated that the ordinary consumer will, in certain cases, expressly agree to take a supply (see the provisions of the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, ss. 25, 27, referred to pp. 587, 591, *ante*; and see note (*g*), p. 588, *ante*).

(*a*) *Ibid.*, s. 31 (1). But see *ibid.*, s. 32, referred to p. 594, *post*.

(*b*) *Ibid.*, s. 31 (2).

(*c*) *Ibid.*, s. 31 (3).

(*d*) It is the practice to schedule the maximum prices to the Provisional Order. The schedule defines "unit" as the energy contained in a current of 1,000 amperes flowing under an e.m.f. of one volt during one hour. The maximum rate per quarter chargeable where the charge is by the amount of energy supplied is fixed at so much (usually 8*d.* or less) per unit with a minimum equivalent to the fixed charge per unit on twenty units. And charges at the same rates are authorised where the charge is by the electrical quantity contained in the supply, the amount of energy supplied being taken to be "the product of that electrical quantity and the declared pressure at the consumer's terminals, that is to say, such a constant pressure at those terminals as may be declared by the undertakers under the Board of Trade regulations." Provisions requiring the undertakers to declare to the consumer, *inter alia*, the pressure at which they propose to supply him will be found in the Board of Trade regulations applicable to the undertaking.

SECT. 12. Supply of Electricity etc.

of Trade, such prices as the Board determine on approving the method (*e*).

Revision of maximum prices and method of charge.

The Board of Trade are, however, empowered, in the case of undertakers other than the local authority, upon due representation to them, after the lapse of five years from the commencement of the special Order, to make an order varying the prices stated in the special Order or approved by the Board, or substituting other prices; and the prices for the time being in force may be altered in like manner at any time after the expiration of any period of five years after they were last altered. And the Board have similar powers for varying the undertakers' methods of charge (*f*).

Agreement as to charges.

1163. Subject to the provisions of the special Order and of the principal Act, and to the right of the consumer to require that he shall be charged according to one of the methods above mentioned, the undertakers may make any agreement with a consumer as to the price to be charged for energy, and the mode of ascertaining those charges (*g*).

Charge for supply to public lamps.

1164. In the case of undertakers other than the local authority the price to be charged for energy supplied to the public lamps and the method of ascertaining those charges are to be settled by agreement, or, in case of difference, to be determined by arbitration, regard being had to specified considerations (*h*).

(*e*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 32 (1).

(*f*) *Ibid.*, s. 32 (2); Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 10. S. 32 (2) of the schedule to the Act of 1899 provided for variation of the maximum prices or methods of charge at intervals of seven years on the application of the undertakers or the local authority. S. 10 (1) of the Act of 1909 amends the section for the purposes of its incorporation with future Orders and special Acts by substituting five years for seven, and enabling the Board to act on the application of such number of consumers, not less than twenty, as the Board consider sufficient, having regard to the population of the area of supply; and s. 10 (2) provides that where a previous Act or Provisional Order enables the Board to revise or vary any maximum prices (there is no mention in sub-s. (2) of methods of charge), the Act or Order shall be construed so as to enable the revision or variation to take place at intervals of five years where a longer interval is fixed by the Act or Order, and so as to enable the power of revision or variation to be exercised on the representation of such number of consumers, not less than twenty, as the Board of Trade consider sufficient, having regard to the population of the area of supply, in cases where under the Act or Order the power either cannot be exercised on such a representation, or can be exercised only on the representation of a number of consumers greater than twenty.

Clauses are contained in many Provisional Orders and special Acts requiring a local authority acting as undertakers to adjust their charges periodically with a view to balancing revenue and expenditure. See also p. 555, *ante*.

(*g*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 33. See note (*g*), p. 588, *ante*.

(*h*) *Ibid.*, s. 34. In *Bulawayo Municipality* v. *Bulawayo Waterworks Co., Ltd.*, [1908] A. C. 241, P. C., a contract for the lighting of streets etc. by electricity provided for the payment of the contractors at such rates as should yield them a return equal to "10 per cent. over the actual cost of generating the light." And it was held that for the purposes of the contract "generating the light" covered the whole series of operations leading up to the production of the light in the street lamps, and the "actual cost" thereof covered all that the production of the light cost, including depreciation of plant, rent, rates, taxes, and insurance.

SECT. 13.—*Supply outside Area of Supply.*

SECT. 13. Supply outside Area of Supply.

1165. The general powers of the undertakers for the supply of electricity are, as has been explained (*i*), confined to supplying electricity in their area of supply for use in that area. The Board of Trade have, however, the following powers to authorise the undertakers to supply electricity outside, or for use outside, their area of supply (*j*):—

Supply in bulk to other undertakers.

1166. The Board of Trade may, by order, permit any undertakers to supply electricity in bulk to any other undertakers upon such terms and conditions as may be specified in the order, if the supply can be given without breaking up any streets, except such as the undertakers giving or those receiving the supply are authorised to break up; but no such order is to be made until due notice of the intention to make it has been given and persons affected have had an opportunity of stating objections (*k*).

Supply to railways, tramways, and canals.

1167. Any undertakers (*l*) may, with the consent of the Board of Trade, supply at any point within their area of supply electricity for the purposes of haulage or traction on any railway, tramway, or canal situate partly within and partly without that area, and for the purposes of lighting vehicles and vessels used on any such railway, tramway, or canal; but the Board are not to give such consent until due notice of the application for the consent has been given and persons affected have had an opportunity of stating objections (*m*).

Interference with observatories and laboratories.

Electricity supplied under the foregoing powers (*n*) must not, however, be used by the recipients so as to interfere, or be likely to interfere, with Government or statutory observatories or laboratories; but this restriction does not apply where the recipients have authority to use electricity for the purposes for which a supply is authorised by those powers (*n*) by virtue of an Act, or Order having the effect of an Act, containing provisions for the protection of such observatories or laboratories (*o*).

Supply to occupier of premises outside area of supply.

1168. The Board of Trade have power, on proof to their satisfaction that the occupier of any premises outside the area of supply of any undertakers is desirous of obtaining a supply of electricity from

(*i*) See p. 566, *ante*.

(*j*) The Board of Trade have issued a memorandum as to the procedure on applications to them under the enactments conferring the powers in question.

(*k*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 4 (3). As to the power to authorise a supply in bulk by Provisional Order, see pp. 557, 558, *ante*.

(*l*) The words are "any local authority, company, or person authorised to supply electricity in any area."

(*m*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 5 (1). There are similar provisions in many special Acts. See, *e.g.*, the enactments referred to, p. 639, *post*, and the metropolitan legislation mentioned at p. 621, *post*. As to the power to authorise a supply to railways etc. for other purposes by Provisional Order under *ibid.*, s. 5 (2), see p. 557, *ante*.

(*n*) The words are "under this section," and would seem to include cases where the supply is authorised by a Provisional Order granted under sub-s. (2) of the section, as to which see p. 557, *ante*.

(*o*) *Ibid.*, s. 5 (3). Compare the metropolitan enactments mentioned in note (*u*), p. 624, *post*.

SECT. 13. Supply outside Area of Supply.

them, and with the consent of the local authority of the district comprising the premises, and of the undertakers (if any) authorised to supply the premises, or (subject to an exception for cases of undertakers under a specific statutory prohibition against supplying electricity within the area of supply of other undertakers) without such consent if, in the opinion of the Board, it is unreasonably withheld, to make an order authorising the giving of the supply on such terms and conditions as the Board think fit (*p*).

The order may, for the purpose of enabling the supply to be given, confer such powers and impose such duties on the undertakers as would have been conferred or imposed by the Electric Lighting Acts and as might have been conferred or imposed by Provisional Order if the premises and the route along which lines are to be laid for the purposes of the supply had been within the undertakers' area of supply (*q*).

SECT. 14.—*Meters.*

Value of supply to be ascertained by certified meter.

1169. In the case of an ordinary consumer, the "value of the supply"—*i.e.*, the amount of energy supplied or the electrical quantity contained in the supply (according to the method of charge selected)—is, except as otherwise agreed, to be ascertained by means of an appropriate "certified meter"—*i.e.*, a meter duly certified by an electric inspector appointed under the special Order to be capable of ascertaining the value of the supply within such limits of error as may, as respects meters of the class to which the meter belongs, be allowed by the Board of Trade, and to be of a construction and pattern approved by the Board—fixed and connected with the service lines in a manner approved by the Board.

If a certified meter is altered it ceases to be a certified meter until it is again duly certified (*r*).

Certification of meter, and of its having been duly fixed.

1170. It is the duty of an electric inspector, at the request of, and on payment of the prescribed fee by, the undertakers or a consumer to examine and, if he considers it entitled to certification, to certify a meter intended for ascertaining the value of the supply; and, upon the like request and payment, to examine the manner in which any such meter has been fixed and connected with the service lines, and to certify that it has been so fixed and connected in some manner approved by the Board of Trade, if he considers that it is entitled to be so certified (*s*).

Supply of meter to consumer by undertakers.

1171. The undertakers are, at the request of a consumer, to supply him with an appropriate meter, and, if required, to fix it

(*p*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 6 (1), (4).
(*q*) *Ibid.*, s. 6 (2).
(*r*) *Ibid.*, Sched. II. That schedule contains amended versions of ss. 49, 50, 51 and 53 of the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19); and, by s. 11 of the Act of 1909, the amended versions are to be substituted for the sections in their original form for the purposes of the schedule to the Act of 1899 as incorporated with special Acts and Provisional Orders subsequent to the Act of 1909, and also with the necessary adaptations (if any) for corresponding provisions contained in or incorporated with earlier Acts and Orders.
(*s*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), Sched. II. See note (*r*), *supra*.

and connect the service lines with it and procure its certification; and they are given powers of entry on the consumer's premises for these purposes; but they may, before supplying the meter, require the consumer to pay or secure to them a reasonable sum in respect of its price, or, if he desires to hire it, to enter into an agreement for its hire as stated below (*t*).

Notice of connection or disconnection of meter.

1172. Both the undertakers and the consumer are prohibited, under penalty, from connecting the meter with, or disconnecting it from, a line through which the undertakers supply energy, except upon due notice (*u*).

Consumer to keep his meters in order.

1173. The consumer is to keep all meters belonging to him whereby the value of the supply is to be ascertained in proper order, and in default of his so doing the undertakers may cease to supply energy through the meter (*v*).

Inspection of consumer's meter.

The undertakers have, however, power for the inspection, testing etc. of such meter; and the expenses incident to such testing etc. are payable by the undertakers or the consumer according as the meter is or is not found to be in proper order (*w*).

Letting of meter by undertakers.

1174. The undertakers may let for hire a meter for ascertaining the value of the supply, and any fittings thereto, for such remuneration and upon such terms as to the repair, and for securing the safety and return, of the meter and fittings, as may be agreed, or, in case of difference, settled by the Board of Trade; and the remuneration is recoverable summarily as a civil debt (*x*).

Undertakers to keep their meters in order.

1175. The undertakers are, unless the agreement for hire otherwise provides, to keep meters let for hire by them whereby the value of the supply is ascertained in proper order at their own expense, and in default of their so doing the consumer is not liable for rent of the meter during the default. The undertakers have powers for the inspection, testing etc. of the meter; and are to bear the expense of re-certification, if re-certification is thereby rendered necessary (*y*).

Disputes as to meters.

1176. Differences between a consumer and the undertakers as to the correctness of a meter whereby the value of the supply is ascertained (whether belonging to the consumer or to the undertakers), or as to whether that value has been correctly registered by a meter, are to be determined on the application of either party by an electric inspector, or, where the local authority are the consumers, by an inspector appointed by the Board of Trade. The inspector is to order by which of the parties the costs are to be paid, and his decision is final and binding on the parties. Subject

(*t*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 52.
(*u*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), Sched. II. See note (*r*), p. 596, *ante*.
(*v*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 54 (1).
(*w*) *Ibid.*, s. 54 (2).
(*x*) *Ibid.*, s. 55.
(*y*) *Ibid.*, s. 56.

SECT. 14. Meters.

to what has been said, the register of the meter is conclusive evidence in the absence of fraud of the value of the supply (*z*).

Expenses of new meter.

1177. The expenses of providing a new meter in place of an existing meter, on change by the undertakers in their method of charging, are payable by the undertakers and recoverable summarily as a civil debt (*a*).

Undertakers may keep additional meters.

1178. In addition to any meter placed on a consumer's premises to ascertain the value of the supply, the undertakers may, upon certain conditions, and at their own expense, place on his premises a meter or other apparatus for ascertaining or regulating the amount of energy supplied, the number of hours during which the supply is given, the maximum power taken, or any other quantity or time connected with the supply (*b*).

SECT. 15.—*Recovery of Charges.*

Consumer to notify undertakers before removing.

1179. Twenty-four hours' notice in writing must be given to the undertakers by every consumer before he quits any premises supplied with electric energy by the undertakers, and, in default of such notice, the consumer so quitting is liable to pay to the undertakers the money accruing due in respect of such supply up to the next usual period for ascertaining the register of the meter on the premises, or the date from which any subsequent occupier of the premises may require the undertakers to supply electric energy to such premises, whichever shall first occur. Notice to the effect of this obligation is to be indorsed upon any demand note for charges for electric energy (*c*).

Cutting off supply if charges not paid.

1180. If any local authority, company, or person neglect to pay any charge for electricity or any other sum due from them to the undertakers in respect of the supply of electricity to such local authority, company, or person, the undertakers may cut off the supply and cut or disconnect electric lines or other works for the purpose, and may, until the charge or sum, together with the expenses of the undertakers in cutting off the supply, be fully paid, but no longer, discontinue the supply (*d*).

Supply of incoming tenant where outgoing tenant in arrear.

1181. If a consumer leaves the premises where electricity has been supplied to him without paying the charges for electricity or meter rent due from him, the undertakers are not entitled to require from the next tenant of the premises the payment of the arrears left unpaid by the former tenant, unless the incoming tenant has undertaken with the former tenant to pay or exonerate him from the payment of the arrears (*e*). In the last-mentioned

(*z*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 57.
(*a*) *Ibid.*, s. 58.
(*b*) *Ibid.*, s. 59.
(*c*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 17. Provisions of a similar character are contained in many special Acts and recent Provisional Orders.
(*d*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 21; and see Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 18, cited p. 590, *ante*.
(*e*) Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), s. 39, as incorporated

cases the undertakers are entitled to require payment of the arrears as a condition of continuing the supply (*f*); but they have no personal remedy against the incoming tenant (*g*).

Recovery of charges.

1182. If any person supplied with electricity, or with any electric meter or fittings, by the undertakers neglects to pay them the charges due for electricity, or the rent or money due for the hiring or fixing of the meter, or the expenses lawfully incurred by them in cutting off the electricity from his premises, the undertakers may recover the amount due summarily as a civil debt (*h*). And where any person neglects to pay any sum due and payable by him to the undertakers, they may recover the same with full costs in any court of competent jurisdiction (*i*).

with the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), by s. 12 of that Act; see note (*k*), p. 573, *ante*. The official receiver taking possession of a debtor's premises under a receiving order is not an "incoming tenant" of the premises for the purposes of the section, and is therefore not entitled to a supply of electricity without paying arrears due from the debtor (see *Re Smith, Ex parte Mason*, [1893] 1 Q. B. 323; compare *Re Thomas, Ex parte Ystradyfodwg Local Board* (1887), 57 L. J. (Q. B.) 39). The liquidator of a company is apparently in a similar position (see *Re Wearmouth Crown Glass Co.* (1882), 19 Ch. D. 640; *Re Blazer Firelighter, Ltd.*, [1895] 1 Ch. 402). So also is a receiver appointed by the court in a debenture-holders' action, at least if the order of the court does not direct delivery of possession of the premises to him (*Paterson* v. *Gas Light and Coke Co.*, [1896] 2 Ch. 476, C. A.; compare *Re Marriage, Neave & Co., North of England Trustee, Debenture and Assets Corporation* v. *Marriage, Neave & Co.*, [1896] 2 Ch. 663, C. A.); or if the order only orders delivery of possession so far as is necessary for such receivership (see *Husey* v. *Gas Light and Coke Co.* (1902), 18 T. L. R. 299). But compare with the last case *Husey* v. *London Electric Supply Corporation*, [1902] 1 Ch. 411, C. A., cited p. 591, *ante*, where, however, s. 39 of the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), was not mentioned. Whether a receiver appointed on behalf of debenture-holders, without the intervention of the court, under powers in their security would be an "incoming tenant" seems doubtful. In *Paterson* v. *Gas Light and Coke Co., supra*, LINDLEY, L.J., at p. 482, expressed an opinion to the contrary; but see *Madge* v. *Debenture Corporation* (1896), 12 T. L. R. 203; *Richards* v. *Kidderminster Overseers*, [1896] 2 Ch. 212. The trustee in bankruptcy, if he has taken possession of the debtor's premises, is on the other hand an "incoming tenant," and entitled accordingly to a supply of electricity without paying arrears due from the debtor (see *Re Flack, Ex parte Berry*, [1900] 2 Q. B. 32).

(*f*) S. 39 of the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), gives them the right by implication (see *Paterson* v. *Gas Light and Coke Co., supra, per* RIGBY, L.J., at p. 485).

(*g*) See *Cannon Brewery Co.* v. *Gas Light and Coke Co.*, [1904] A. C. 331, approving *Gas Light and Coke Co.* v. *Mead* (1876), 45 L. J. (M. C.) 71.

(*h*) Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), s. 40, as incorporated with the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), by s. 12 of that Act; see note (*k*), p. 573, *ante*. In the case of a company whose property is in the hands of a receiver appointed by the court at the instance of the holders of debentures secured by a floating charge on the company's property, the court will grant leave to the undertakers to distrain on the property in the receiver's hands for the purpose of satisfying a justices' order for the payment of charges due from the company to the undertakers for electricity supplied before the appointment of the receiver, since the undertakers' statutory right to payment is paramount to an equitable charge on the consumer's property; see *Re Adolphe Crosbie, Ltd., Johnson and Hughes* v. *Adolphe Crosbie, Ltd.* (1909), 74 J. P. 25.

(*i*) Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), s. 41, as incorporated with the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), by s. 12 of that Act, see note (*h*), *supra*. The remedy of the undertakers under the section is expressed to be in addition to their other remedies. If electricity is supplied through an automatic "slot" meter actuated by coins, the payment to the

SECT. 16.
Acquisition of Undertaking by Local Authority.

SECT. 16.—*Acquisition of Undertaking by Local Authority.*

Right of local authority to purchase undertaking.

1183. Any local authority within whose jurisdiction the area of supply, or any part of it, is situated may, within six months after the expiration of forty-two years, or any shorter period specified in the Provisional Order, from the passing of the confirming Act, and within six months after the expiration of every subsequent ten years, or any shorter period specified in the Provisional Order, by notice in writing require the undertakers to sell (and thereupon the undertakers must sell to them their undertaking, or so much of it as is within such jurisdiction) upon terms of paying the then value of all lands, buildings, works, materials, and plant of the undertakers suitable to and used by them for the purposes of their undertaking within such jurisdiction; such value to be determined by arbitration in case of difference.

Principle of valuation.

The value of the lands, buildings, works, materials, and plant is to be deemed to be their fair market value at the time of the purchase, due regard being had to the nature and then condition of the buildings, works, materials, and plant, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same to the purposes of the undertaking, and, where a part only of the undertaking is purchased, to any loss occasioned by severance, but without any addition in respect of compulsory purchase, or of goodwill, or of any profits which may or might have been made from the undertaking, or of any similar considerations.

Power of Board of Trade to determine questions.

The Board of Trade may determine any other questions which may arise in relation to such purchase, and may fix the date from which it is to take effect, and from and after that date, or such other date as may be agreed, the property purchased will vest in the local authority, freed from any debts, mortgages, or similar obligations of the undertakers or attaching to the undertaking; and the powers of the undertakers within the area in question will cease, and vest in the local authority (*j*).

Vesting of undertaking on purchase.

Variation of terms by Provisional Order.

The Board of Trade may, however, in a Provisional Order vary the above terms of purchase in such manner as may have been agreed upon between the local authority and the

undertakers takes place, unless otherwise agreed, when the coin is inserted in the meter, so that if the coins are afterwards stolen the loss, at any rate in the absence of negligence on the consumer's part, falls on the undertakers; see *Edmundson* v. *Longton Corporation* (1902), 19 T. L. R. 15.

(*j*) Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), s. 2, which applies to undertakings under special Act, subject to anything therein to the contrary, as well as to undertakings under Provisional Order. The section, which repeals and replaces s. 27 of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), is framed upon s. 43 of the Tramways Act, 1870 (33 & 34 Vict. c. 78), upon which or similar special tramway legislation the cases cited in notes (*n*) to (*t*) on pp. 601, 602, *post*, were decided.

As to the stamp duty payable, on a statutory sale of property, under the Finance Act, 1895 (58 & 59 Vict. c. 16), s. 12, the application of which to the sale of an electric undertaking was considered in *A.-G.* v. *Eastbourne Corporation*, [1902] 1 K. B. 403, C. A., see title REVENUE.

SECT. 16.
Acquisition of Undertaking by Local Authority.

undertakers (*k*). And where different local authorities have under those provisions powers to purchase different parts of the undertaking of a company, any one of the local authorities may, with the consent of, and upon terms and conditions approved by, the Board of Trade, and, in the case of an undertaking authorised before April 1st, 1910 (*l*), with the consent of the company, transfer their right of purchase to any other of such local authorities (*m*).

Transfer of powers of purchase between local authorities.

Where any generating station, mains, or other works of a company used solely for supplying electricity within the district of a local authority are situate outside the district of that authority, they are, for the purposes of the purchase, to be deemed to be within the district; and, where they are used solely for supplying electricity within the districts of two or more local authorities, but are not situate within any of those districts, the Board of Trade may, on the application of all or any of those authorities, by Provisional Order apply this provision, subject to such adaptations as are required (*n*).

Works outside district of purchasing authority.

Again, where powers to supply premises outside their area of supply are conferred on undertakers other than a local authority, by order of the Board of Trade (*o*), works and lines erected and laid under those powers are, so long as the order remains in force, to be deemed, for the purposes of the purchase, to form part of the undertaking within the district of the local authority which comprises the area of supply, or, if that area is comprised within the districts of more than one such authority, then within such of those districts as the Board of Trade may determine (*p*).

(*k*) Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), s. 3. As to the exercise of the powers of the section, see pp. 637, 638, *post*.

(*l*) The date of the commencement of the Electric Lighting Act, 1909 (9 Edw. 7, c. 34); see *ibid.*, s. 27 (3).

(*m*) *Ibid.*, s. 7 (2).

(*n*) *Ibid.*, s. 7 (1). The sub-section, which does not, except by agreement between the local authority and the company concerned, apply to any generating station etc. authorised by a special Act passed before the Act of 1909, seems to have been drafted on the assumption that under s. 2 of the Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), the question whether any particular lands, buildings etc. of the undertakers are to be included in the purchase depends upon whether they are locally within the district of the purchasing authority. But it would seem that this is not the case, but, subject to the provisions of the Act of 1909, that the question depends upon whether they are suitable to and used by the undertakers for the purposes of the undertaking, or (should the undertaking extend beyond that jurisdiction) the part of it within the jurisdiction of the purchasing authority; and that, where the lands, buildings etc. subserve both the purposes of the undertaking, or the part of it within the jurisdiction of the purchasing authority, and other purposes, the question whether they are suitable to and used for the purposes of the undertaking, or the part of it in question, so that they must be included in the purchase, is one of fact for the arbitrator. See *Re Manchester Carriage and Tramways Co. and Manchester Corporation* (1902), 87 L. T. 504, settled in C. A. (1903), 19 T. L. R. 439; *Manchester Carriage and Tramways Co., Ltd.* v. *Swinton and Pendlebury Urban Council*, [1906] A. C. 277; *North Metropolitan Tramways Co., Ltd.* v. *Leyton Urban District Council* (1907), 71 J. P. 536, affirmed (1908) 72 J. P. 241, C. A.

(*o*) Under the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 6. See pp. 595, 596, *ante*.

(*p*) *Ibid.*, s. 6 (3) See note (*n*), *supra*.

SECT. 16. Acquisition of Undertaking by Local Authority.

Lands are not to be excluded from the purchase by reason of failure on the part of the vendors to make a good title to them, but infirmity in the title should be taken into account in assessing the purchase price (*q*).

Purchase price.

The purchase price must be measured by what it would cost, at the date of the purchase, to provide the lands, erect the buildings, put down the electric lines etc., subject to proper deductions for depreciation, and not by the value of the undertaking as a profit-earning concern (*r*). It does not, however, necessarily include all expenses to which undertakers, beginning *de novo*, would be put in establishing an undertaking similar to that in question (*s*).

Amalgamation of undertakings.

An enactment amalgamating two undertakings for some purposes may not preclude the local authority from purchasing one of the amalgamated undertakings separately (*t*).

Special powers of purchase.

1184. Clauses enabling a local authority to purchase an undertaking upon terms other than the foregoing before the expiration of the forty-two years are very commonly inserted in Provisional Orders (*u*). And the provisions above mentioned as to the transfer of powers of purchase between different local authorities, and as to generating stations and other works outside the district of the purchasing authority or outside the area of supply, extend to purchases under such clauses (*v*).

SECT. 17.—*Remedy of Defects.*

Order of Board of Trade for remedy of system or works.

1185. If at any time it is established to the satisfaction of the Board of Trade—

(a) That the undertakers are supplying energy otherwise than by means of a system approved by the Board, or (except in accordance with the special Order) have permitted any part of their circuits to be connected with earth, or placed any electric line above ground; or

(b) That any electric line or works of the undertakers are defective, so as not to be in accordance with the special Order or the Board of Trade regulations; or

(*q*) See *Manchester Carriage and Tramways Co., Ltd.* v. *Swinton and Pendlebury Urban Council*, [1906] A. C. 277, *per* Lord MACNAGHTEN, at p. 279.

(*r*) *Edinburgh Street Tramways Co.* v. *Edinburgh Corporation*, [1894] A. C. 456; *London Street Tramways Co.* v. *London County Council*, [1894] A. C. 489. Compare *Dudley Corporation* v. *Dudley etc. Electric Traction Co.* (1907), 97 L. T. 556, H. L.

(*s*) See *London, Deptford and Greenwich Tramways Co.* v. *London County Council*, [1905] 1 K. B. 316, where it was held that what it would cost to widen certain narrow streets in which a tramway was laid was not, for the purposes of the Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 43, an element in the value of the tramways, though, at the date of the purchase of the tramway under that section, power to lay tramways in the streets could not have been obtained except upon the terms that the promoters should bear the expense of widening the streets.

(*t*) See *North Metropolitan Tramways Co.* v. *London County Council* (1895), 60 J. P. 23, C. A.

(*u*) See pp. 636, 637, *post*.

(*v*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), ss. 6 (3), 7.

(c) That any work of the undertakers or their supply of energy is attended with danger to the public safety, or injuriously affects any telegraphic line of the Postmaster-General,

SECT. 17. Remedy of Defects.

the Board may by order specify the matter complained of, and require the undertakers to abate or discontinue it within a time specified in the order; and if the undertakers make default in complying with the order they are liable in penalties.

The Board may also by the same or another order forbid the use of any electric line or work as from a specified date until the order is complied with, or for a specified time, and the undertakers are liable in penalties in case of breach of the prohibition.

In any case of non-compliance with any such order, whether a pecuniary penalty has been recovered or not, the Board, if in their opinion the public interest so requires, may revoke the special Order on such terms as they think just (*w*).

SECT. 18.—*Revocation of Powers.*

1186. Certain cases in which the Board of Trade have power to revoke the special Order have been mentioned (*x*).

Revocation of special Order.

The Board have also powers for the revocation of the special Order as to the whole or (with the consent of the undertakers) as to any part of the area of supply—

(1) Where a local authority are not the undertakers, in cases of default on the undertakers' part due to insolvency;

(2) Where a local authority are not the undertakers, in cases of its being impossible to carry on the undertaking with profit; and

(3) Where the local authority are the undertakers, in cases of default on the undertakers' part independently of its cause (*y*).

And the Board have a general power to revoke the special Order with the consent of the undertakers, and, where the local authority are not the undertakers, with the consent of that authority (*z*).

1187. Where the order is revoked notice of the revocation is, in certain cases, if the Board of Trade so direct, to be published, by due advertisement in a local newspaper, by the undertakers, or, if the revocation was applied for by the local authority, by that authority (*a*).

Notice of revocation.

1188. If the Board of Trade, in any case where the local authority are not the undertakers, revoke the special Order as to the whole or any part of the area of supply, provisions take effect of which the following is a summary:—

The Board are to notify the undertakers and the local authority, fixing a date at which the revocation is to take effect, and as from that date the powers etc. of the undertakers will cease (*b*).

Within a limited time after the service of the notice the local

Purchase by local authority on revocation of Order.

(*w*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 69.
(*x*) See *ibid.*, ss. 3, 4 (3), 5 (3), 23, 69, cited pp. 562, 567, 587, *ante*.
(*y*) *Ibid.*, ss. 63—65.
(*z*) *Ibid.*, s. 66.
(*a*) *Ibid.*, s. 74.
(*b*) *Ibid.*, s. 67 (a).

SECT. 18. Revocation of Powers.

authority may require the undertakers to sell them so much of the undertaking, or of the part of it in question, as is within their district, upon terms practically identical with those applicable to a sale under the Electric Lighting Act, 1888 (*c*).

Vesting of undertaking on purchase.

In the case of such a purchase, the undertaking, or the part of it purchased, vests in the local authority freed from debts etc. of the undertakers or attaching to the undertaking, and the revocation extends only to rights etc. of the undertakers; and in other respects the special Order remains in force in the area in question in favour of the local authority.

Removal of works failing purchase.

Failing such purchase, the local authority and any body or person liable to repair a street in which works of the undertakers have been placed are empowered (subject to any agreement providing for their removal by the undertakers) to remove the works, and to require payment from the undertakers of the cost of removal and of reinstatement of the street, to be determined if the undertakers duly so require by arbitration. In default of payment the works removed may be sold to defray the expenses, the balance, if any, being payable to the undertakers.

Application of security to compensation.

Any compensation due from the undertakers in respect of certain matters will be a first charge on any money deposited or secured under the special Order in respect of the area in question, and not repaid or released; the money will be applicable rateably for the purpose; and the amount of compensation in respect of the various claims, and the persons to whom it is payable, will be determinable by arbitration (*d*).

Removal of works of local authority.

1189. Where the Board of Trade revoke the special Order in a case where the local authority are the undertakers, provisions apply as to the removal of works in streets, the payment of the expenses, and the sale of the works to satisfy those expenses, corresponding with and similar to those above mentioned with regard to other undertakings (*e*).

SECT. 19.—*Accounts and Audit.*

Annual statement of accounts.

1190. The undertakers are required, under penalties, to fill up annually a statement of accounts of the undertaking, which is to be in such form, to contain such particulars, and to be published in such manner as may be prescribed by the Board of Trade; and to keep copies on sale at a limited price. In the case of undertakers other than a local authority the accounts are to be made up to December 31st, and to be filled up on or before March 25th (*f*).

(*c*) As to a sale under the Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), see p. 600, *ante*. The provisions of the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), ss. 6 (3), 7, applicable in the case of a sale under the Act of 1888 appear to be applicable also in the case of a sale upon the revocation of the Order.

(*d*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 67.

(*e*) *Ibid.*, s. 68.

(*f*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 9. The Board of Trade have not (1910) issued any general Order relative to such accounts; but prescribe the form to be used for each undertaking separately. The Board have three model forms applicable respectively to undertakings of local authorities, other undertakings of ordinary character, and power undertakings.

But where a local authority are the undertakers March 31st and June 30th are substituted for those dates, subject to power for the Board to substitute other dates in special circumstances (*g*).

Audit.

1191. Except where the undertakers are a local authority, the statement of accounts is to be audited, before publication, by an auditor appointed by the Board of Trade, whose remuneration and expenses, to the amount approved by the Board, are to be paid by the undertakers, and are recoverable from them summarily. The undertakers are to facilitate the audit by giving access to books and in other respects. The Board may make regulations on various matters in regard to the audit. Any report made by the auditor, or such portion thereof as the Board direct, must be appended to the statement of accounts, and, for the purposes of publication etc. (*h*), is to form part thereof (*i*). And the Board are from time to time to make a return to Parliament giving particulars with regard to such reports and any action taken thereon by the Board or the undertakers (*j*).

SECT. 20.—*Inspectors; Testing and Inspection.*

Appointment of electric inspectors.

1192. The local authority, where they are not the undertakers, and, where they are the undertakers, the Board of Trade, on due application, may appoint and keep appointed electric inspectors for the undertaking. Where the local authority appoint an inspector they may pay him reasonable remuneration, either in addition to or in substitution for fees. Where, the local authority being the undertakers, the appointment is made by the Board, the local authority must pay the inspector such reasonable remuneration, either in addition to or substitution for fees, as the Board determine; and where the remuneration is settled to be in substitution for fees, any fees payable by any party other than the undertakers are, instead of being paid to the inspector for his own use, payable to him on behalf of the undertakers and are to be carried to the credit of the local rate. The Board have a power of appointing inspectors also where the local authority are not the undertakers, in case of failure on their part to appoint an inspector or to attend properly to the inspection of electric lines and works, or in case the local authority become the undertakers (*k*).

Duties and fees of inspectors.

1193. The duties of such an inspector are—the inspection and testing, both periodically and in special cases, of the undertakers' electric lines and works and the supply of energy given by them; the certifying and examination of meters; and such other duties

(*g*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 12. Before the Act of 1909 the accounts of local authorities under the Electric Lighting Acts were frequently made up to March 31st under local Acts.

(*h*) Under the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 9; see note (*f*), p. 604, *ante*.

(*i*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 6.

(*j*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 13.

(*k*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, ss. 35, 37,

SECT. 20. Inspectors and Testing.

as may be required of him under the special Order or the Board of Trade regulations.

The local authority, with the approval of the Board, or the Board, if the inspector is appointed by them, may prescribe the manner in and times at which the inspector's duties are to be performed, and the fees to be taken by him; and those fees are to be accounted for and applied as directed by the local authority or the Board, as the case may be (*l*).

Testing of mains.

1194. The testing of the undertakers' mains is regulated in regard to the notice to be given, the time and manner of the inspection, the inspector's right of access to and interference with the mains, and the intervals at which a particular portion of a main may be tested. And the undertakers are relieved from responsibility for interruption in the supply of energy on occasions of testing (*m*).

Testing of consumer's apparatus.

1195. Consumers are given certain rights to have apparatus on their premises tested and inspected by an electric inspector (*n*).

Testing stations.

1196. Where the local authority are not the undertakers, the undertakers are required to establish and maintain testing stations in connection with their distributing mains, containing instruments of approved pattern, and duly connected with the mains, and to supply energy thereto for testing. The local authority are given a voice with regard to the number of the stations; and there are provisions for the determination of disputes on that and other subjects in regard to the testing stations by arbitration. And where the local authority are the undertakers similar obligations may be imposed on them by a court of summary jurisdiction on the application of a certain number of consumers (*o*).

Instruments to be kept by undertakers.

Observations to be recorded.

1197. Instruments are to be duly kept by the undertakers on premises from which they supply energy by distributing mains, and observations duly made and recorded; and observations so recorded are receivable in evidence (*p*).

Readings.

1198. The undertakers are to keep the required instruments at testing stations and on their own premises in efficient working order, and the electric inspectors may examine and record the readings of the instruments; and readings so recorded are receivable in evidence. Where the local authority are not the undertakers such examinations and readings must be made at such times and in such manner as may be directed by the authority by whom the inspector is appointed (*q*).

Inspectors' rights of access etc.

1199. The electric inspectors are given rights of access for testing electric lines and instruments of the undertakers, and powers, if they are not in order, to require them to be put in order (*r*).

(*l*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 36.
(*m*) *Ibid.*, s. 39.
(*n*) *Ibid.*, s. 40.
(*o*) *Ibid.*, s. 41.
(*p*) *Ibid.*, s. 42.
(*q*) *Ibid.*, s. 43.
(*r*) *Ibid.*, s. 44.

SECT. 20. Inspectors and Testing.

1200. The undertakers are entitled to be represented at the testings and inspections of mains, service lines, and instruments; but their representative is not to interfere with the testing or inspection (*s*).

Undertakers rights and duties as to tests etc.

1201. The undertakers are required, under penalties, to afford facilities for, and to comply with the special Order in regard to, inspection and testing and the reading and inspection of instruments (*t*).

Reports of inspectors.

1202. The electric inspectors are to report the results of their testings and the reports are receivable in evidence. An appeal lies to the Board of Trade against such a report (*a*).

Expenses of inspector.

1203. Save as otherwise provided by the special Order or by the Board of Trade regulations, all fees and reasonable expenses of an electric inspector are, unless agreed, to be ascertained by a court of summary jurisdiction, or (where the inspector is appointed by them) by the Board of Trade, and are to be paid by the undertakers, and if a local authority are the undertakers, are recoverable summarily as a civil debt.

Where, however, the report of an electric inspector, or the decision of the Board, shows that any consumer was guilty of any default or negligence, the fees and expenses are, on being ascertained as above mentioned, to be paid by the consumer as the court or the Board, by whom the fees are ascertained, having regard to the report or decision, direct, and are recoverable summarily as a civil debt. And in any proceedings for penalties under the special Order the fees and expenses of an electric inspector incurred in connection with the proceedings are payable by the complainant or defendant, as the court direct (*b*).

The expenses of the inspector thus payable are those specifically incurred in making tests and inspections, and do not include his salary or the general expenses of his laboratory and staff (*c*).

SECT. 21.—*Miscellaneous.*

SUB-SECT. 1.—*Personal Liability of Members etc. of Local Authority.*

Personal immunity of members and officers of local authority.

1204. The provisions of the Public Health Act, 1875 (*d*), as to the personal immunity of members, officers, and persons acting under the directions of a local authority are extended to the local authority acting as undertakers (*e*).

SUB-SECT. 2.—*Maps and Sections.*

Maps and sections to be prepared by undertakers.

1205. The undertakers are required to cause a map of the area of supply, showing certain particulars and on a scale to be

(*s*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 45.
(*t*) *Ibid.*, s. 46.
(*a*) *Ibid.*, s. 47.
(*b*) *Ibid.*, s. 48.
(*c*) *Crawford* v. *City of London Electric Lighting Co.* (1898) 67 L. J. (Q. B.) 942.
(*d*) 38 & 39 Vict. c. 55, s. 265. See title LOCAL GOVERNMENT,
(*e*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 9.

SECT. 21. Miscellaneous.

prescribed, to be published forthwith after the commencement of the supply, and to be corrected once in every year; and the Board of Trade or the Postmaster-General may require the preparation of sections, on a scale to be prescribed, of certain of the undertakers' underground works. Rights of inspecting and copying the map and sections are given, and certain authorities are entitled to be supplied with copies, and to have those copies corrected from time to time. The fulfilment of these obligations is secured by penalties (*f*).

SUB-SECT. 3.—*Notices.*

Forms and authentication of documents.

1206. Notices, orders, and other documents under the special Order may be in writing or print, or partly in writing and partly in print, and where requiring authentication by the local authority may be authenticated by the signature of their clerk or surveyor (*g*).

Service of notices and other documents.

1207. Methods are provided in which the service of any notice, order, or document authorised to be served under the special Order or the principal Act may be effected in the cases respectively of service on the Board of Trade, the Postmaster-General, county councils, local authorities, the undertakers (not being the local authority), companies, and persons.

A special method of service is authorised in the case of a notice, order, or document required or authorised by the special Order to be served on the owner or occupier of premises; and where the service of such notice, order, or document is required or authorised by the schedule to the Act of 1899, a method is authorised of addressing it without naming the owner or occupier (*h*). The documents that may be thus served, and apparently addressed, include summonses (*i*). There are special provisions as to the computation of time in connection with the service of notices and other documents under the special Order (*j*).

(*f*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 60.

(*g*) *Ibid.*, s. 61.

(*h*) *Ibid.*, s. 62. There is, however, a slight difficulty as to the application of the section to the service of certain notices by the undertakers. The Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), s. 45, which is incorporated with the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), by s. 12 of that Act, provides methods for the service of "every notice which the undertakers are by this Act required to serve upon any person"; and these methods may differ in some cases from those provided by s. 62 of the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19). What meaning should be attributed to the expression "this Act" in s. 45 of the Act of 1871 as incorporated with the Act of 1882, seems doubtful. If it is confined to the incorporated clauses of the Act of 1871, the section as incorporated is inoperative. It might extend to the incorporated clauses of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), seeing that the Act of 1871 is incorporated with that of 1847, though by a section (s. 1) not incorporated with the Act of 1882 (see *Willingale* v. *Norris*, [1909] 1 K. B. 57). And it might possibly include the provisions of the Act of 1882, and even those of the schedule to the Act of 1899. There is a similar difficulty about the expression in other incorporated sections of the Act of 1871.

(*i*) See *R.* v. *Mead*, [1894] 2 Q. B. 124; and compare *R.* v. *Mead*, [1898] 1 Q. B. 110, which, however, apparently turned on words to which there is nothing to correspond in s. 62 of the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19).

(*j*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 62 (4).

SUB-SECT. 4.—*Publication of Board of Trade Regulations.*

SECT. 21. Miscellaneous.

1208. The undertakers are required, under penalties, to cause the Board of Trade regulations applicable to the undertaking to be printed, to keep a certified copy thereof at their principal office within the area of supply, to supply copies at a limited price, and, if not themselves the local authority, to serve a copy on that authority (*k*).

Board of Trade regulations to be published.

SUB-SECT. 5.—*Security.*

1209. Security required under the special Order to be given to or by the undertakers may be by deposit (subject to provisions for payment of interest on the deposit) or otherwise, and of an amount agreed or, failing agreement, determined by a court of summary jurisdiction, and that court may deal with the costs of the proceedings, and its decision is final and binding on all parties (*l*).

Method etc. of giving security.

SUB-SECT. 6.—*Board of Trade Proceedings.*

1210. The Board of Trade may appoint any fit person to inquire and report as to the manner and extent in and to which the provisions of the special Order and the principal Act, and of the Board of Trade regulations, so far as those provisions affect the safety of the public, have been complied with by the undertakers; and a person so appointed, who is not an electric inspector, has, for the purposes of his appointment, all the powers of an electric inspector under the special Order (*m*).

Board of Trade inquiries.

The Board have also a general power of inquiry, by any person appointed by them in that behalf, for the purpose of the exercise of their jurisdiction under the special Order (*n*).

1211. Things required or authorised under the special Order to be done by, to, or before the Board of Trade may be done by, to, or before the President or a secretary or assistant secretary of the Board. Documents purporting to be orders of the Board and to be authenticated in specified ways are, in the absence of proof to the contrary, to be received in evidence as such. And acts and orders of the Board may be conclusively proved by a certificate of the President (*o*).

Board may act by President etc.

Authentication of orders etc. of Board.

1212. Where the special Order provides for any consent or approval of the Board of Trade, the Board may give it subject to terms or conditions, or withhold it, at their discretion (*p*).

Powers of Board as to consents etc.

All costs and expenses of or incident to any approval, consent, certificate, or order of the Board or of any inspector or person appointed by the Board, including the cost of any inquiry or tests for the purpose of determining whether the same should be

Costs of Board.

(*k*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 70.
(*l*) *Ibid.*, s. 71.
(*m*) *Ibid.*, s. 38 (2).
(*n*) Board of Trade Arbitrations, etc. Act, 1874 (37 & 38 Vict. c. 40), s. 2, as made applicable by the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 28. See note (*c*), p. 610, *post*.
(*o*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 72.
(*p*) *Ibid.*, s. 73 (1).

SECT. 21. Miscellaneous.

given or made, to such an amount as the Board certify to be due, are to be borne and paid by the applicant therefor (*q*).

Approval of plans etc.

Where any approval is given by the Board to any plan, pattern, or specification, they may require copies thereof to be prepared and deposited at their office at the applicant's expense, and may, as they think fit, revoke any approval so given, or permit the approval to be continued, subject to such modifications as they think necessary (*r*).

Notice of approval or extension of time.

1213. Where the Board of Trade, upon the application of the undertakers, give any approval or grant any extension of time for the performance of any duties by the undertakers, notice thereof is, if the Board so direct, to be published by the undertakers by due advertisement in a local newspaper (*s*).

Notice of application for extension of time.

1214. Undertakers other than the local authority must notify the local authority of any application to the Board of Trade for an extension of time for the performance of the undertakers' duties; and opportunity is to be given to the local authority to make representations or objections with reference thereto (*t*).

Expenses of Board.

1215. Subject to the provisions of the special Order on the subject (*a*), the provisions of the Board of Trade Arbitrations, etc. Act, 1874 (*b*), with regard to the payment by parties to an application to the Board of Trade of expenses incurred by the Board upon such an application, apply with reference to applications under the special Order (*c*).

SUB-SECT. 7.—*Recovery of Penalties etc.*

Penalties etc. under incorporated provisions of Gasworks Clauses Acts.

1216. Offences, forfeitures, penalties, and damages under the provisions of the Gasworks Clauses Acts, 1847 and 1871 (*d*), incorporated with the Electric Lighting Acts may be prosecuted and recovered in the manner provided by the Gasworks Clauses Acts (*e*), that is to say, before justices, subject in certain respects to the provisions of the Railways Clauses Consolidation Act, 1845 (*f*), as to summary proceedings (*g*).

(*q*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 73 (2). And see the Board of Trade Arbitrations, etc. Act, 1874 (37 & 38 Vict. c. 40), s. 3, as applied by the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 28. See note (*c*), *infra*.

(*r*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 73.

(*s*) *Ibid.*, s. 74.

(*t*) *Ibid.*, s. 75.

(*a*) See Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 73 (2), cited note (*q*), *supra*.

(*b*) 37 & 38 Vict. c. 40, ss. 3, 4.

(*c*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 28, whereby a licence or Provisional Order granted under that Act is to be deemed a special Act within the meaning of the Board of Trade Arbitrations, etc. Act, 1874 (37 & 38 Vict. c. 40).

(*d*) 10 & 11 Vict. c. 15; 34 & 35 Vict. c. 41. See title GAS.

(*e*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 12. See note (*k*), p. 573, *ante*.

(*f*) 8 & 9 Vict. c. 20. See title RAILWAYS AND CANALS.

(*g*) The Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 40, incorporates "the clauses of the Railways Clauses Consolidation Act, 1845" (8 & 9 Vict. c. 20) "with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices." These clauses of the Act of 1845 are contained in ss. 140—161 of that Act, of

Penalties etc. under special Order.

1217. Penalties, fees, expenses, and other moneys recoverable under the special Order, or under the Board of Trade regulations, the recovery of which is not otherwise specially provided for, are recoverable summarily in manner provided by the Summary Jurisdiction Acts (*h*).

Application of penalties.

A penalty recovered by an officer of the local authority, where they are not the undertakers, is, if there is an electric inspector for the time being appointed by the local authority, payable to that officer and by him to the local authority, to be applied in aid of the local rate.

A penalty recovered on prosecution by any other body or person, or any part thereof, may, if the court so direct, be paid to that body or person (*i*).

Form of summons or warrant, competence of justices, etc.

1218. Enactments in the Gasworks Clauses Act, 1871 (*j*), incorporated with the Electric Lighting Acts (*k*), provide for the inclusion of several names or several sums in one summons or warrant, and for the competence of justices and county court judges to act notwithstanding their liability to charges for electricity (*l*).

which ss. 146, 147, 151, 155, 161, and in part ss. 145, 150, 153 and 157, have been repealed as superseded by provisions in the Summary Jurisdiction Acts or as otherwise obsolete (Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66), s. 1, and schedule; Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4, and schedule; Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19), s. 1, and schedule). Under the unrepealed sections (as to which see title MAGISTRATES), compensation for the determination and recovery of which no other provision is made is assessable, and, subject to the provisions of the Summary Jurisdiction Acts as to the recovery of civil debts (see *East London Waterworks Co.* v. *Charles*, [1894] 2 Q. B. 730; *R.* v. *Kerswill*, [1895] 1 Q. B. 1), recoverable before two justices, subject to an appeal to quarter sessions; and penalties are recoverable before two justices, subject, again, to an appeal to quarter sessions. The Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 42, however, expressly enables a magistrate having by law authority to act alone in lieu of two justices, so to act for the purposes of that Act. The unrepealed sections of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), further give a power of summary arrest in the case of unknown offenders; provide for the publication of particulars of offences and penalties as a condition of the enforcement of penalties; and impose penalties for injury to notices containing such particulars. It is, however, very questionable whether by any means all of the provisions of the Act of 1845 above mentioned can be regarded as dealing with the manner in which forfeitures, penalties, and damages are to be prosecuted and recovered, so as to be applicable with reference to the provisions of the Gasworks Clauses Acts incorporated with the Electric Lighting Acts. S. 43 of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), renders provisions of the Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), as to the recovery and application of penalties, appeals, and the binding over and expenses of witnesses, applicable to offences under the Act of 1847 committed within the metropolitan police district. And s. 44 of the same Act makes persons giving false evidence on proceedings under the Act liable as for perjury. But it is not clear how far, if at all, these sections can be regarded as applied in the case of offences against the provisions of the Gasworks Clauses Acts which are incorporated with the Electric Lighting Acts.

(*h*) See title MAGISTRATES.

(*i*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 76.

(*j*) 34 & 35 Vict. c. 41, ss. 42, 46.

(*k*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 12. See note (*h*), p. 573, *ante*.

(*l*) S. 42 of the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), enacts that "any summons or warrant issued for any of the purposes of this Act may contain, in the body thereof, or in a schedule thereto, several names and several sums." And s. 46 of the same Act enacts that "no justice or judge of any

SECT. 21. Miscellaneous.

SUB-SECT. 8.—*Saving Clauses.*

Mining rights.

1219. The Electric Lighting Act, 1882, contains a saving clause for rights of working mines and minerals under and near roads in which the undertakers' lines are laid (*m*), and an elaborate saving clause for the monopoly of the Postmaster-General in regard to telegraphic communication (*n*).

Monopoly of Postmaster-General.

Crown rights.

1220. The schedule to the Electric Lighting Clauses Act, 1899, contains a saving clause for Crown rights generally, and, subject to a provision authorising the Board of Trade to consent on behalf of the Crown to interference therewith, for rights of the Crown in any shore, bed of the sea, river, channel, creek, bay, or estuary specially (*o*).

Application of future Acts.

1221. Nothing in the Electric Lighting Acts exempts the undertakers or their undertaking from future general Acts relating to the supply of electricity; and nothing in the special Order exempts them or their undertaking from, or deprives them of the benefit of, future general Acts relating to electricity or to the supply of or the price to be charged for energy (*p*).

SUB-SECT. 9.—*Injury to Undertakers' Works.*

Malicious injury to electric works.

1222. It is a felony, punishable by penal servitude or imprisonment with or without hard labour, unlawfully and maliciously to cut or injure any electric line or work with intent to cut off any supply of electricity, but the enactment making it a felony does not exempt a person from any proceeding for any offence punishable under any other enactment, or at common law, so that no person be punished twice for the same offence (*q*).

Fraudulent use of electricity etc.

1223. Penalties, payable to the undertakers, are imposed on persons causing lines to communicate with those of the undertakers without their consent (*r*), fraudulently injuring meters (*s*),

county court or quarter sessions shall be disqualified from acting in the execution of this Act by reason of his being liable to the payment of any gas rent or other charge under this Act." It is difficult to see what meaning should be attributed to "this Act" for the purposes of the sections as incorporated with the Electric Lighting Acts (see note (*h*), p. 608, *ante*). It is also not clear whether s. 46 of the Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), extends to justices out of sessions.

(*m*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 33 (see p. 585, *ante*).

(*n*) *Ibid.*, s. 35. As to the Postmaster-General's monopoly, see title TELEGRAPHS AND TELEPHONES.

(*o*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 80.

(*p*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 34; Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 82. The object of such clauses is to prevent the maxim *generalia specialibus non derogant* (as to which see title STATUTES) from applying so as to take the undertakers out of the operation of general Acts. See *Grand Junction Waterworks Co.* v. *Hampton Urban Council* (1898), 67 L. J. (Q. B.) 903.

(*q*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 22. The section is not in terms confined to electricity supplied under statutory powers (see note (*e*), p. 543, *ante*).

(*r*) The purpose with which the communication is made is immaterial (*Wood* v. *West Ham Gas Co.* (1885), 49 J. P. 662). And even a right in the person making the communication to a supply from the undertakers will not necessarily afford him a defence (see *Kyffin* v. *Metropolitan Water Board* (1908), 72 J. P. 517).

(*s*) The reference in s. 18 of the Gasworks Clauses Act, 1847 (10 & 11 Vict.

using (in the case of a supply otherwise than by meter) burners of larger dimensions or for a longer time than has been contracted for, otherwise improperly using the electricity, or supplying others with any part of the electricity supplied by the undertakers; and the undertakers are empowered to cut off the supply in cases of such offences (*t*). And penalties, payable to the undertakers together with the amount of the damage done, are imposed for wilful damage to electric lines and various other works of the undertakers, for wilfully extinguishing any of the public lamps or lights (*a*), or for wasting or improperly using any of the electricity supplied by the undertakers (*b*).

Wilful damage etc.

1224. A person carelessly (*c*) or accidentally (*d*) breaking, throwing down, or damaging any electric line, pillar, or lamp belonging to the undertakers or under their control is liable to pay, by way of satisfaction to the undertakers for the damage done, such sum not exceeding £5 as the justices think reasonable (*e*). But the existence of this liability does not deprive the undertakers of their common law remedies in damages in the case of a tortious injury to their works (*f*).

Careless or accidental damage.

1225. Penalties, payable to the undertakers together with the amount of damages sustained by them, are, without prejudice to other rights and liabilities, imposed on persons wilfully, fraudulently, or by culpable negligence injuring or suffering to be injured electric lines, meters, or fittings belonging to the undertakers, altering the index to a meter, preventing a meter from registering

Injury to meters; fraudulent use of electricity etc.

c. 15), is to "any such meter as aforesaid," *i.e.*, apparently to meters supplied or let by the gas undertakers under s. 13 or s. 14 of that Act. Those sections (of which s. 14, being replaced by provisions in the Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), is repealed, except as regards certain undertakers, by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66)) are not incorporated with the Electric Lighting Acts; but they may be referred to for the purpose of interpreting s. 18 as so incorporated. See *Portsmouth Corporation* v. *Smith* (1885), 10 App. Cas. 364, *per* Lord BLACKBURN, at p. 371.

(*t*) Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 18, as incorporated with the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), by s. 12 of that Act (see note (*k*), p. 573, *ante*).

(*a*) Meaning, no doubt, those lighted by means of electricity supplied by the undertakers.

(*b*) Gasworks Clauses Act, 1847 (10 & 11 Vict, c. 15), s. 19, as incorporated with the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), by s. 12 of that Act (see note (*k*), p. 573, *ante*).

(*c*) "Carelessly" for this purpose includes carelessness short of negligence (*Ashton* v. *Eccles Corporation* (1906), 71 J. P. 55).

(*d*) "Accidentally" for this purpose includes cases of pure accident in which there is no element even of carelessness (*Burgess* v. *Morris* (1897), 61 J. P. 553, approved in *Ashton* v. *Eccles Corporation*, *supra*).

(*e*) Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 20, as incorporated with the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), by s. 12 of that Act (see note (*k*), p. 573, *ante*). In *Harding* v. *Barker* (1888), 53 J. P. 308, a similar enactment was held not to render a master liable for damage caused, without negligence, by his servant. The case is, however, difficult to understand. The absence of negligence seems to have been thought material; yet WILLS, J., expressed the opinion that the enactment applied to the person actually causing the damage only, and FIELD, J., seems to have decided the case on the ground that the servant was not acting within the scope of his authority.

(*f*) *Crystal Palace Gas Co.* v. *Idris & Co.* 1900\. 82 L. T. 200

SECT. 21. Miscellaneous.

correctly, or fraudulently abstracting, consuming, or using electricity of the undertakers. In the case of these offences the undertakers are authorised to discontinue the supply to the offender until the matter complained of has been remedied; and the existence of artificial means for causing such alteration or prevention, or for abstracting, consuming, or using electricity of the undertakers, when the meter is under the custody or control of the consumer, is *primâ facie* evidence that the alteration, prevention, abstraction, or consumption has been fraudulently, knowingly, and wilfully caused by the consumer using the meter (*g*).

SUB-SECT. 10.—*Stealing Electricity.*

Stealing electricity.

1226. A person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses, any electricity is guilty of simple larceny and punishable accordingly (*h*).

SUB-SECT. 11.—*Property in Apparatus on Consumers' Premises.*

Property in undertakers' apparatus on consumers' premises.

1227. Electric lines, fittings, apparatus, and appliances let by the undertakers on hire, or belonging to them, or (so long as the whole of the instalments have not been paid) disposed of by them on terms of payment by instalments, but being in or upon premises of which they are not in possession, are, whether or not fixed or fastened to the premises or the soil under the premises, to continue to be the property of, and to be removable by, the undertakers, provided that such lines etc. are duly marked so as to indicate the undertakers as the actual owners (*i*).

SUB-SECT. 12.—*Entry on Premises.*

Undertakers' rights of entry on consumers' premises

1228. The undertakers have, through their officers, powers of entry on premises for purposes of inspecting apparatus, ascertaining the quantity of electricity consumed or supplied, and, where a supply is no longer required, or the undertakers are authorised to cut off the supply, removing apparatus, subject to the repair of damage caused by the entry, inspection, or removal (*j*).

(*g*) Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), s. 38, as incorporated with the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), by s. 12 of that Act. See note (*k*), p. 573, *ante*.

(*h*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 23. The section is not in terms confined to electricity supplied under statutory powers; see note (*e*), p. 543, *ante*.

(*i*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 16. The section, besides containing the provisions of which the effect is stated in the text, extends and applies the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), ss. 24 and 25 (cited in notes (*j*), *infra*, and (*k*), p. 615, *post*), to the lines etc. to which it refers, subject to the proviso with regard to their being marked so as to indicate the undertakers as the owners, and enacts that nothing in the section shall affect the amount of the assessment for rating of any premises upon which any electric lines etc. are or shall be fixed.

(*j*) The powers were originally given by the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 24, in regard to premises to which electricity is or has been supplied by the undertakers, and the powers of inspecting apparatus under that section applied to "the electric lines, meters, accumulators, fittings, works, and apparatus for the supply of electricity belonging to the undertakers." But the powers of the section are extended by the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 16; see note (*i*), *supra*.

SUB-SECT. 13.—*Distress and Execution.*

SECT. 21. Miscellaneous.

1229. Electric lines and other apparatus of the undertakers placed in or upon premises not in their possession are protected against distress or the landlord's remedy for rent of the premises where the same may be, and against being taken in execution under any process of a court of law or equity, or any bankruptcy proceedings against the person in whose possession they may be (*k*).

Protection of undertakers' apparatus against distress and execution.

SUB-SECT. 14.—*Notice of Accidents.*

1230. The undertakers are required, under penalties, to send notice to the Board of Trade of any accident by explosion or fire, of such kind as to have or be likely to have caused loss of life or personal injury, which has occurred in or in connection with their works or circuits, and also of any loss of life or personal injury occasioned by any such accident. Such notice must be sent by the earliest practicable post after the accident, or, as the case may be, after the loss of life or personal injury becomes known to them. And the Board have powers for inquiring into the cause of an accident affecting public safety occasioned by or in connection with the undertakers' works (*l*).

Notice of accidents.

SUB-SECT. 15.—*Arbitration.*

1231. Any matter which is by the Electric Lighting Acts or the special Order determinable by arbitration must, except as otherwise expressly provided, be determined by an engineer or other fit person to be nominated as arbitrator by the Board of Trade on the application of either party, and the expenses of the arbitrator are to be borne and paid as the arbitrator directs (*m*). Where, however, the difference arises under the special Order and a railway or canal company are a party, the Board, instead of appointing an arbitrator, may refer the difference to the Railway and Canal Commissioners (*n*).

Arbitration under Electric Lighting Acts or special Order.

SUB-SECT. 16.—*Stamp Duty on Agreements for Supply of Electricity.*

1232. Electric energy is to be deemed to be goods, wares, or merchandise for the purposes of the exemptions (*o*) of contracts for

Stamp duty on agreements for supply of electricity.

(*k*) The protection was originally given by the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 25, to any electric lines, meters, accumulators, fittings, works, or apparatus belonging to the undertakers, and placed in or upon any premises not in their possession for the purposes of the supply of electricity under the Act of 1882 or any licence, Order, or special Act, but is extended by the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 16; see note (*i*) on p. 614, *ante*, and, generally, titles DISTRESS, Vol. XI., p. 141; EXECUTION; BANKRUPTCY AND INSOLVENCY, Vol. II., p. 140.

(*l*) Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 38. Accidents in connection with electric works are in many cases notifiable to the factory inspector of the district under the Notice of Accidents Act, 1906 (6 Edw. 7, c. 53), s. 4. And such accidents are in some cases notifiable to the Board of Trade under the Notice of Accidents Act, 1894 (57 & 58 Vict. c. 28), which, however, does not apply to accidents notifiable to the Board under any other Act (*ibid.*, s. 6). As to the Notice of Accidents Acts, see titles FACTORIES AND SHOPS; MASTER AND SERVANT.

(*m*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 28.

(*n*) Board of Trade Arbitrations, etc. Act, 1874 (37 & 38 Vict. c. 40), ss. 6, 7; applied by the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 28.

(*o*) In the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59, and schedule, *sub voce* "Agreement."

SECT. 21. Miscellaneous.

the sale of goods, wares, or merchandise from the stamp duties chargeable on contracts for the sale of property, and of agreements for or relating to the sale of goods, wares, or merchandise from the sixpenny stamp duty on agreements under hand (*p*). But agreements for the supply of electricity by undertakers may be liable to stamp duty under other heads (*q*).

Part VI.—Metropolitan Undertakings.

Application of Electric Lighting Acts in London.

1233. The provisions of the Electric Lighting Act, 1888 (*r*), as to the purchase of electrical undertakings by local authorities have been fundamentally modified in their application to the majority of the metropolitan undertakings (*s*). But in other respects the Electric Lighting Acts, 1882 to 1909 (*t*), apply in London substantially as they apply elsewhere (*u*). And, except in one or two cases where the undertaking was originally authorised by special Act, the metropolitan undertakings, of which some are carried on by metropolitan borough councils (*v*) and the remainder by companies (*w*), were originally authorised by Provisional Orders granted under those Acts. Many special Acts (*x*) have, however,

(*p*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 19. The section is not in terms confined to energy supplied by authorised undertakers. See note (*g*), p. 543, *ante*. In *County of Durham Electrical Power Distribution Co.* v. *Inland Revenue Commissioners*, [1909] 2 K. B. 604, C. A., it was doubted whether a contract for the supply of electricity related to the sale of "goods, wares, or merchandise." See title CONTRACT, Vol. VII., p. 538.

(*q*) See *County of Durham Electrical Power Distribution Co.* v. *Inland Revenue Commissioners*, *supra*, where an agreement by the company to supply a consumer with electricity for six years at a fixed charge per quarter (reducible in certain events, but not below a certain minimum) plus 1*d.* a unit was held chargeable with stamp duty as a security for sums of money at stated periods. See also *British Electric Traction Co.* v. *Inland Revenue Commissioners*, [1902] 1 K. B. 441, C. A., and title REVENUE.

(*r*) 51 & 52 Vict. c. 12, ss. 2, 3.

(*s*) By the London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.). See pp. 624—626, *post*.

(*t*) 45 & 46 Vict. c. 56; 51 & 52 Vict. c. 12; 9 Edw. 7, c. 34.

(*u*) Except as regards the local authorities and their local rates and borrowing powers, as to which see pp. 548, 552—554, *ante*, the Electric Lighting Acts, 1882 to 1909, do not distinguish between the metropolis and the rest of the country.

(*v*) The metropolitan borough councils are local authorities for the purposes of the Electric Lighting Acts (see p. 548, *ante*); and in some cases Provisional Orders have been granted to them as such. In most cases, however, their undertakings are carried on by them as successors, under the London Government Act, 1899 (62 & 63 Vict. c. 14), of the vestries and district boards to whom the Orders authorising the undertakings were granted. As to the transfer of powers, duties, and property effected by that Act generally, see title METROPOLIS.

(*w*) In many cases one company carries on more than one undertaking. For a list of the companies with their special Acts, see note (*i*), p. 618, *post*.

(*x*) The following metropolitan borough councils have special Acts:—Hackney (6 Edw. 7, c. cxci.); St. Marylebone (4 Edw. 7, c. xli.); St. Pancras (6 Edw. 7, c. cxcv.); Stoke Newington (3 Edw. 7, c. vii.); and Woolwich (3 Edw. 7, c. clxxvii.; 5 Edw. 7, c. clxi.); see p. 618, *post*.

been passed relating to particular metropolitan undertakings; and there is important legislation applicable to metropolitan undertakings generally (*y*).

Metropolitan Provisional Orders.

1234. The metropolitan Provisional Orders that have been granted do not differ, in point of substance, from provincial Orders in any very fundamental respect (*a*).

Adjustments consequent on changes of boundary.

1235. In consequence of changes of boundary effected by and under the London Government Act, 1899 (*b*), the areas of supply of many of the metropolitan borough councils, who, under that Act, succeeded district boards and vestries as undertakers under the Electric Lighting Acts, were not in the first instance coterminous with their boroughs. And similarly the areas of supply of many undertakings in the hands of companies which had before the Act of 1899 been coterminous with local areas were not in the first instance coterminous with metropolitan boroughs.

These anomalies have in many cases been abolished by adjustments effected partly directly by the London Electric Lighting Areas Act, 1904 (*c*), and partly by agreements for transfers of areas under that Act (*d*).

Breaking up streets.

Where, however, a metropolitan borough council continue to have

(*y*) Particularly the London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), and the London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.). See pp. 618 *et seq.*, *post*.

(*a*) The schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), is not incorporated with any metropolitan Provisional Order (see p. 544, *ante*). The metropolitan Orders are consequently all, irrespective of date, of the type of the provincial Orders granted before that Act. Each Order, unless merely an amending or extending Order, is self-contained, comprising provisions substantially equivalent to those in the schedule to that Act as well as such provisions as have since been inserted in Provisional Orders. The more important points of substance in which the metropolitan Orders differ from the provincial Orders are the following:—The London Council, to the exclusion of the local authority, are given powers, in the case of undertakings of local authorities as well as others, as to electric inspectors and the testing of the undertakers' mains etc. similar to those of the local authority under the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, ss. 35—37, 41, 43, 47; and under these powers general rules sealed by the council on March 28th, and affirmed by the Board of Trade on June 17th, 1898, have been issued. The London County Council are given a voice in other matters which in the provinces are entirely for the local authority, the Board of Trade, and the Postmaster-General, or one or more of them; and there are provisions for the protection of works and property of the council. The provisions corresponding with s. 18 of the schedule to the Act of 1899 require longer notice than that section. There are provisions with regard to the placing of the undertakers' works in street subways where such exist (see also the London County Council Subways Act, 1893 (56 & 57 Vict. c. ccii.), and the extending enactments, as to which see title HIGHWAYS, STREETS AND BRIDGES). The obligations on the undertakers to lay distributing mains under the provisions corresponding with ss. 24 and 25 of the schedule to the Act of 1899 arise on the requisition of two or more owners or occupiers; and it is enough for the requisitioners to contract for or guarantee the taking of a supply of electricity for two years. And the provisions as to the application of penalties differ from those in the provincial Orders.

(*b*) 62 & 63 Vict. c. 14. See title METROPOLIS.

(*c*) 4 Edw. 7, c. 13, ss. 1, 2; and see *ibid.*, ss. 3, 5, 6, 8—13.

(*d*) *Ibid.*, s. 4, and see *ibid.*, ss. 5, 6, 8—13. Agreements under the Act may be made for the lighting of boundary streets; *ibid.*, s. 4 (1, b).

PART VI. Metropolitan Undertakings.

power to supply electricity or to break up streets in an area outside their borough, the council of the borough comprising the outside area are in the same position with regard to the former council as if that council were supplying electricity in the area under a Provisional Order with which the schedule to the Electric Lighting (Clauses) Act, 1899 (*e*), was incorporated (*f*).

Metropolitan legislation of 1908.

1236. Important provisions with regard to metropolitan undertakings are contained in the London Electric Supply Act, 1908, and the London (Westminster and Kensington) Electric Supply Companies Act, 1908 (*g*).

London Electric Supply Act, 1908.

The former of these Acts divides the companies with powers for the supply of electricity within the administrative county of London (with the exception of the North Metropolitan Electric Power Supply Company (*h*), to which the Act does not extend) into the two categories of "London electric supply companies," and "specified companies" (*i*).

"London electric supply companies;" "specified companies."

And, though it contains important enactments on other subjects, its main purposes were, first, to enable the companies and local authorities carrying on the metropolitan undertakings to act in concert in certain respects (*k*), and, secondly, to empower the

(*e*) 62 & 63 Vict. c. 19.

(*f*) London Electric Lighting Areas Act, 1904 (4 Edw. 7, c. 13), s. 7. The section appears to be extended, *mutatis mutandis*, to the case of an alteration of the boundary of the administrative county of London by *ibid.*, s. 10.

(*g*) 8 Edw. 7, cc. clxvii., clxviii. The Acts both received the royal assent on December 21st, 1908.

(*h*) This company has powers for the supply of electricity, though only to authorised undertakers, in Stoke Newington, which is within their area of supply (see 5 Edw. 7, c. clxxvi., and 63 & 64 Vict. c. cclxxvi., ss. 4, 7, 11); and has also certain powers for the supply of authorised users outside their area of supply which are available elsewhere in the metropolis. See further pp. 627, 631, *post*.

(*i*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 2, Sched. I. The Act uses the expressions "a supply company" and "a specified company" respectively to designate companies in the two categories individually.

The London Electric Supply Companies, with their respective special Acts (if any) are: the Brompton and Kensington Electricity Supply Co., Ltd.; the Charing Cross, West End, and City Electricity Supply Co., Ltd. (63 & 64 Vict. c. ccxxvii.); the Chelsea Electricity Supply Co., Ltd. (61 & 62 Vict. c. ccxxxiii.; 5 Edw. 7, c. xvi.); the City of London Electric Lighting Co., Ltd. (56 & 57 Vict. c. lxxxv.; 63 & 64 Vict. c. lxxxviii.); the County of London Electric Supply Co., Ltd. (5 Edw. 7, c. clxxiv.); the London Electric Supply Corporation, Ltd.; the Metropolitan Electric Supply Co., Ltd. (52 & 53 Vict. c. cxcvi.; 61 & 62 Vict. c. ccxxxv.; 1 Edw. 7, c. ccxxviii.; 5 Edw. 7, cc. cxlvi., cc.; 6 Edw. 7, c. cciv.); the South London Electric Supply Corporation, Ltd.,; and the South Metropolitan Electric Light and Power Co., Ltd. (3 Edw. 7, c. clxv.).

The specified companies with their respective special Acts (if any) are: the Kensington and Knightsbridge Electric Lighting Co., Ltd. (56 & 57 Vict. c. xxv.; 62 & 63 Vict. c. lxxxiii.), the Notting Hill Electric Lighting Co., Ltd. (62 & 63 Vict. c. lxxxiii.; 1 Edw. 7, c. lxxviii.); the St. James's and Pall Mall Electric Lighting Co., Ltd. (62 & 63 Vict. c. xciv.); the Westminster Electric Supply Corporation, Ltd.; and the Central Electric Supply Co., Ltd. (62 & 63 Vict. c. lxxxviii.; 5 Edw. 7, c. clxxxv.).

The London electric supply companies and the specified companies are all companies registered under the Companies Acts, not companies directly constituted by statute.

(*k*) See the preamble to the London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), referring to provisions corresponding with those in the Electric

London County Council, in substitution for the local authorities (*l*), to purchase, ultimately, the undertakings of the London electric supply companies, though not those of the specified companies.

The London (Westminster and Kensington) Electric Supply Companies Act, 1908 (*m*), consists in the main of sections (confined entirely to the specified companies) corresponding closely to, and in many cases substantially identical in language with, the sections of the London Electric Supply Act, 1908 (*n*), which are concerned with matters other than the purchase of the undertakings of the London electric supply companies (*o*).

London (Westminster and Kensington) Electric Supply Companies Act, 1908.

1237. The London Electric Supply Act, 1908, defines "authorised undertakers" as meaning London electric supply companies and local authorities as defined by the Electric Lighting Act, 1882, for the time being authorised by or under a Provisional Order or Orders to supply electrical energy within the administrative county of London; and each of such authorised undertakers is referred to in the Act as an authorised undertaker (*p*).

Definitions. "Authorised undertakers."

If, however, the specified companies or any of them exercise any powers under the provisions or for the purposes of the Act they are in respect of the exercise of those powers subject to the provisions of the Act which authorised undertakers would be liable in the exercise of similar powers, and for that purpose the expression "authorised undertakers" in the Act means and includes such specified companies or company (*q*).

The Act defines "electric main" as meaning a wire or wires, conductor or other means, used for the purpose of conveying or transmitting electrical energy, and as including any casing, coating, covering, tube, pipe, trough, or insulator inclosing, surrounding, or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of conveying or transmitting electrical energy (*r*).

"Electric main."

1238. The authorised undertakers and the specified companies, or any two or more of them, are empowered, with the approval of the Board of Trade, to enter into and carry into effect agreements for mutual assistance or for association with each other in regard to the giving and taking of a supply of electrical energy and the distribution and supply of energy so taken; the management and

Agreements for mutual assistance.

Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule s. 3, as having impeded concerted action.

(*l*) The local authorities had powers of purchase under the Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), s. 2 (see p. 600, *ante*), and in some cases alternative powers under special clauses in Provisional Orders.

(*m*) 8 Edw. 7, c. clxviii.

(*n*) 8 Edw. 7, c. clxvii.

(*o*) The expressions "the companies" and "a company" in the London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.; see s. 2), have the same meaning as "specified companies" and "a specified company" in the London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.; see s. 2). In some cases the provisions of the two Acts are complementary; in others they cover, *pro tanto*, the same ground.

(*p*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 2.

(*q*) *Ibid.*, s. 3.

(*r*) *Ibid*, s. 2. There is an identical definition in the London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.), s. 2.

PART VI. Metropolitan Undertakings.

working of the generating stations or of any part or parts of the several undertakings of the contracting parties; the appropriation and division of receipts arising under, and the provision of capital required for carrying into effect, such agreements; and any matters or things incidental to or connected with these purposes. These powers are, however, subject to a saving for the obligations and liabilities towards third parties of the undertakers and companies entering into the agreement.

Particulars of proposals for such an agreement submitted to the Board of Trade are to be furnished to the London County Council, and the Board are to entertain representations of that council on the matter before approving the agreement (*s*).

Connecting mains.

1239. For the purpose of carrying into effect agreements under the Acts of 1908, for the giving and taking of a supply of electrical energy, authorised undertakers and specified companies are given powers for laying electric mains for connecting the generating stations and areas of supply of the contracting parties. And they are individually empowered to lay mains to connect different areas which they are allowed to supply, or to connect any such area with their generating station (*t*).

Such a connecting main must not be used for supplying electricity except within an area of supply of the authorised undertaker or specified company to whom it belongs or to an authorised undertaker or specified company under an agreement made in accordance with the Act under which the main is laid (*a*).

(*s*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 3, applying to both authorised undertakers and specified companies; London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.), s. 3, applying to the specified companies. Powers for concerted action are also enjoyed in particular instances by metropolitan undertakers under special Acts. Thus the 62 & 63 Vict. c. lxxxiii. gives the Kensington and Notting Hill companies powers of acting in concert with each other not dissimilar from those conferred by the Acts of 1908. See also 62 & 63 Vict. c. lxxxviii.; 63 & 64 Vict. c. ccxxvii., s. 18; 3 Edw. 7, cc. vii., clxv., s. 10 (1); 4 Edw. 7, c. xli., s. 34; 5 Edw. 7, cc. clxi., s. 19; cc. (as to which see further, p. 626, *post*), authorising a supply in bulk as between particular metropolitan undertakers. See also the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 4, and pp. 557, 558, *ante*.

(*t*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), ss. 4, 15; London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.), ss. 4, 13. The existing Acts and Orders of the company or undertakers are applied to the connecting mains as regards streets within their area of supply, and a large part of the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), with some modifications, is applied as regards streets not within that area; and provision is made as to the route in which the line is to be laid. Many of the metropolitan special Acts provide for the laying of mains by undertakers beyond their area of supply, both where concerted action or supply in bulk between different undertakers is authorised and for connecting with their area of supply a generating station of the undertakers situated outside that area (see 61 & 62 Vict. c. ccxxxv.; 62 & 63 Vict. cc. lxxxiii., lxxxviii.; 63 & 64 Vict. c. ccxxvii.; 1 Edw. 7, c. ccxxviii.; 3 Edw. 7, c. clxv.; 5 Edw. 7, cc. clxxxv., cc.). See also the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 3, and p. 558, *ante*. In *City of London Corporation* v. *County of London Electric Supply Co., Ltd.* (1910), 26 T. L. R. 432, it was held that the company were empowered under s. 4 of the London Electric Supply Act, 1907 (8 Edw. 7, c. clxvii.), to break up streets outside their area.

(*a*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 4 (5); London (Westminster and Kensington) Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.), s. 4 (5).

Power of local authority of intervening area to demand supply.

1240. Where an electric main has to be laid in the area of supply of one local authority with powers for the supply of electricity, for carrying into effect an agreement under the London Electric Supply Act, 1908, between other local authorities, the latter, if they decline to furnish the former with a supply of electricity by agreement upon terms not less favourable than are given to any other local authority under the agreement for the purposes of which the main is laid, may be required by the Board of Trade to furnish the supply upon such terms and conditions as the Board may determine (*b*).

Supply for power.

1241. Authorised undertakers giving or receiving a supply of energy under an agreement entered into under the London Electric Supply Act, 1908 (*c*), are placed under the obligation, subject to certain conditions, of supplying energy for power purposes (defined as including all purposes to which electrical energy may be applied other than for use either directly or indirectly for lighting) at a price not exceeding £6 15*s.* per kilowatt per annum of the maximum power required to be supplied, and ½*d.* a unit for all energy supplied. The supply so given is, if the authorised undertaker so require, to be measured by a separate meter or other apparatus, and the consumer is subjected to penalties and, in addition, to liability to pay the price charged for energy for lighting if he uses the energy for lighting (*d*). And specified companies giving or receiving a supply of energy under an agreement entered into under the London (Westminster and Kensington) Electric Supply Companies Act, 1908, are placed under precisely similar obligations (*e*).

Supply to railways and other undertakings.

1242. Subject to certain conditions and exceptions, authorised undertakers and specified companies are empowered to supply electricity for haulage or traction, and for lighting vehicles or boats drawn or propelled by such haulage or traction, to any company, local authority or other body owning or working any railway (but only if the railway company are authorised by statute or statutory Order to work the railway by electrical power), tramway, dock, canal, navigation, waterworks, or other similar undertaking, situate within or partly within their area of supply, and notwithstanding that the energy is to be used for such purposes in part outside the area (*f*).

Erection of generating station etc. without approval.

1243. Both authorised undertakers and specified companies are prohibited from erecting, or taking a supply of energy from, any

(*b*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 6.

(*c*) 8 Edw. 7. c. clxvii., s. 3.

(*d*) *Ibid.*, s. 7. There is no exception for an ancillary use of the energy for lighting such as is usual in the power Acts (see p. 631, *post*).

(*e*) London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.), s. 6.

(*f*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 8; London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.), s. 9. The London Hydraulic Power Co. are to be deemed a company owning waterworks for the purposes of the latter section (*ibid.*, s. 9 (4)).

Certain of the special Acts also confer powers of supply for haulage purposes on particular undertakers (see 3 Edw. 7, c. clxv., s. 10 (2); 5 Edw. 7, c. clxxiv., s. 21; c. cc. s. 27. See also the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 5, and pp. 557, 595, *ante*.

PART VI. Metropolitan Undertakings.

generating station without the approval of the Commissioners of Works, unless the site for the station is specified in an Act or statutory Order; but these prohibitions do not apply to sub-stations for the transformation and distribution of electric energy, nor to any station in existence on December 21st, 1908, which is not extended beyond the limits of the site occupied by the buildings of the station at that date (*g*), nor to sites occupied by certain specified stations then in existence (*h*). And there is nothing to except authorised undertakers or specified companies from the general restrictions of the Electric Lighting Act, 1909 (*i*), on the erection of generating stations on sites acquired after March 31st, 1909.

Powers of Commissioners of Works as to generating stations.

With a view to the protection of the royal palaces, parks and gardens, museums and other public buildings, and their contents, power is given to the Commissioners of Works, without prejudice to any other remedy, to proceed against authorised undertakers or specified companies by indictment, action, or other proceeding for nuisance caused or permitted by them at their generating stations if the nuisance is caused by non-consumption of smoke, the reasonably preventable evolution of oxides of sulphur, the use of a refuse destructor, or the emission of oil or other matter in conjunction with steam (*k*).

(*g*) The station of the Westminster company at Horseferry Road is to be deemed to have been in existence at the date in question (London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.), s. 17).

(*h*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 19; London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.), s. 17. Similar prohibitions applicable to particular undertakers are contained in 4 Edw. 7, c. xli., s. 13; 5 Edw. 7. c. clxxiv., s. 11; c. clxxxv., s. 12; c. cc., s. 31; 6 Edw. 7, c. cxci., s. 5; c. cxcv., s. 6; c. cciv., s. 13.

Many of the undertakers have been authorised by special Act to provide generating stations on specified land. In most cases the empowering enactments are silent as to the responsibility of the undertakers for nuisance (61 & 62 Vict. cc. ccxxxiii., ccxxxv. (but see 6 Edw. 7, c. cciv., s. 16); 62 & 63 Vict. cc. lxxxviii., xciv.; 63 & 64 Vict. cc. lxxxviii., ccxxvii.; 5 Edw. 7, cc. clxi., clxxiv.), and must doubtless be taken to authorise any inevitable nuisance involved in the use of the station notwithstanding clauses (corresponding with the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 81), in the Orders authorising the undertakings for the purpose of which the generating station is provided, preserving the undertakers' liability for nuisance. One of the Acts, however, expressly declares a clause of the kind inapplicable to the authorised generating station (4 Edw. 7, c. xli.). And some of the Acts declare a clause of the kind inapplicable except in the case of a nuisance due to non-consumption of smoke, evolution of oxides of sulphur, use of any refuse destructor, or emission of oil or other matter in conjunction with steam (6 Edw. 7, c. cxci., s. 3; c. cxcv., s. 2; and see 6 Edw. 7, c. cciv., s. 16). One of the Acts, on the other hand, contains a clause of the kind applicable with reference to certain lands only (5 Edw. 7, c. clxxxv.); and another (62 & 63 Vict. c. lxxxiii., s. 12, seems intended to apply clauses of the kind contained in certain Provisional Orders.

Powers for the compulsory acquisition of land for generating stations may now be conferred on metropolitan as well as other undertakers by Provisional Order under the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 1, and p. 557, *ante*.

(*i*) 9 Edw. 7, c. 34, s. 2. See p. 570, *ante*.

(*k*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 18; London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.), s. 16. The London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 17; and the London (Westminster and Kensington) Electric Supply Companies

Subject to certain conditions, generating stations situate at a greater distance than two miles from St. Paul's Cathedral are exempt from the restrictions imposed on the cubical extent of buildings in London (*l*).

Exemptions from building legislation.

In some cases the discharge of condensing water from the undertakers' works into sewers of the London County Council, or drains or sewers communicating therewith, is restricted (*m*).

Discharge of condensing water into sewers.

1244. The right to demand or to continue to receive a supply of electricity from an authorised undertaker or specified company is, in the case of premises which have also either electrical energy produced on the premises, or a supply from any other source, restricted by provisions similar to those of the Electric Lighting Act, 1909 (*n*), to the benefit of which the undertaker or company are also entitled, as to premises having a separate supply (*o*).

Premises with separate supply.

1245. Expenses of a local authority as an authorised undertaker under the London Electric Supply Act, 1908, are to be deemed expenses under the Electric Lighting Act, 1882 (*p*), and the undertaker's Provisional Order or Orders, and the provisions of the Act of 1882 as to expenses of and borrowing by local authorities (*q*) apply accordingly; and receipts of a local authority in respect of a supply of electricity supplied by them under the Act of 1908 are to be deemed receipts in respect of the undertaking authorised by their Provisional Order or Orders (*r*).

Expenses and borrowing powers of local authorities.

1246. Both the Acts of 1908 contain clauses for the protection of the Metropolitan Water Board (*s*), of the Commissioners of Works

Protective and saving clauses.

Act, 1908 (8 Edw. 7, c. clxviii.), s. 15, from the latter of which the station of the Westminster company at Horseferry Road is excepted, contain provisions applicable to the authorised undertakers and the specified companies respectively, identical (except for provisions as to the procedure in case of an arbitration) with the provisions of the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 22, and pp. 565, 566, *ante*), giving the Commissioners powers for the inspection of generating stations etc. And the Commissioners have similar powers as regards the stations of particular undertakers under 6 Edw. 7, c. cxci., s. 4; c. cxcv., s. 5; c. cciv., s. 17.

(*l*) London County Council (General Powers) Act, 1908 (8 Edw. 7, c. cvii.), s. 17, replacing (see *ibid.*, ss. 15, 16), ss. 75, 76 of the London Building Act, 1894 (57 & 58 Vict. c. ccxiii.). Many of the special Acts contain express provisions as to the application of the London Building Acts or the corresponding earlier legislation to the undertakers' buildings (56 & 57 Vict. c. lxxxv., s. 5; 61 & 62 Vict. c. ccxxxiii., s. 7; 62 & 63 Vict. c. lxxxiii., ss. 17, 18; c. xciv., s. 13; 1 Edw. 7, c. lxxviii., s. 6; 4 Edw. 7, c. xli., s. 5; 5 Edw. 7, c. clxi., s. 7; c. clxxiv., s. 18; c. clxxxv., s. 9).

(*m*) 4 Edw. 7, c. xli., s. 16; 5 Edw. 7, c. clxi., s. 8; c. clxxiv., s. 19; c. clxxxv., s. 10; 6 Edw. 7, c. cxcv., s. 3.

(*n*) 9 Edw. 7 c. 34, s. 15. See p. 590, *ante*.

(*o*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 16; London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.), s. 8. Similar provisions are made as regards particular undertakings by 3 Edw. 7, c. clxv., s. 9; 4 Edw. 7, c. xli., s. 18; 5 Edw. 7, c. clxi., s. 20; c. clxxiv., s. 22; 6 Edw. 7, c. cxci., s. 8.

(*p*) 45 & 46 Vict. c. 56.

(*q*) *Ibid.*, ss. 7, 8. See pp. 552—554, *ante*.

(*r*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 5.

(*s*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 13; London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7,

PART VI. **Metropolitan Undertakings.**

in regard to streets etc. under their control (*t*), and of the Royal Observatory at Greenwich (*u*).

The London Electric Supply Act, 1908, contains also clauses for the protection of railway companies (*a*); the Inner and Middle Temples (*b*); certain commissioners of sewers, and the West Kent Sewerage Board (*c*); gas companies (*d*); the Commissioners or Works in regard to Longford River (*e*); and the Duchy of Cornwall (*f*). And the London (Westminster and Kensington) Electric Supply Companies Act, 1908, contains also a clause for the protection of Crown rights (*g*).

Wiring consumers' premises etc.

1247. All metropolitan borough councils authorised to supply electricity are empowered, subject to certain conditions, to undertake the wiring and fitting, and supplying with wires, fittings, meters, and apparatus, of the premises of their consumers or prospective consumers (but not the manufacture of such fittings and apparatus), and to borrow for the purpose (*h*).

Purchase of supply companies' undertakings by London County Council.

1248. Subject to some minor exceptions, every power to purchase any undertaking or any part of any undertaking of a supply company which would otherwise have been exercisable by a local authority (*i*) in any part of the administrative county of London

c. clxviii.), s. 14. Clauses for the protection of the Board applicable in particular cases are contained in 5 Edw. 7, c. cxlvi., s. 3; 6 Edw. 7, c. cciv., s. 7.

(*t*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 20; London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.), s. 18. Similar clauses applicable in particular cases are contained in 5 Edw. 7, c. clxxiv., s. 24; clxxxv., ss. 13, 14; cc., s. 30; 6 Edw. 7, c. cciv., s. 15.

(*u*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 22; London (Westminster and Kensington) Electric Companies Act, 1908 (8 Edw. 7, c. clxviii.), s. 19. The sections differ. The former is elaborate and very stringent, extending to a certain extent to consumers as well as authorised undertakers.

(*a*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), ss. 9, 10. S. 9 relates to expenses incurred by any railway company by reason of the existence of electric mains laid by any authorised undertaker under the Act. S. 10 relates to a particular cable subway.

(*b*) *Ibid.*, s. 11.

(*c*) *Ibid.*, s. 12.

(*d*) *Ibid.*, s. 14, enabling gas companies to execute works themselves at the cost of an authorised undertaker which it would otherwise be for such undertaker to execute under the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 18.

(*e*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 21.

(*f*) *Ibid.*, s. 31.

(*g*) 8 Edw. 7, c. clxviii., s. 20.

(*h*) London County Council (General Powers) Act, 1906 (6 Edw. 7, c. cl.), ss. 27—29. Special powers of the kind are also given to particular councils by 3 Edw. 7, c. clxxvii., s. 3; 4 Edw. 7, c. xli., s. 20; and 6 Edw. 7, c cxci., s. 6. These special powers are in each case coupled with provisions for the protection of fittings let on hire by the council from distress or execution; and a similar protection is given to fittings let on hire by the South Metropolitan company (3 Edw. 7, c. clxv., s. 7). And now all Metropolitan as well as other undertakers are entitled to the benefit of the similar general provisions of the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 16; see note (*k*), p. 615, *ante*.

(*i*) The local authorities had power of purchase under the Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), s. 2 (see p. 600, *ante*), and, in some cases also under special provisions in the Order authorising the undertaking.

was transferred to the London County Council by the London Electric Supply Act, 1908; and, subject to certain conditions, these powers are exercisable by that Council accordingly, and the Council may purchase all the undertakings or parts of undertakings in the county of all the London electric supply companies not purchaseable by a local authority (*k*).

Conditions of exercise of power of purchase.

Subject to an exception in regard to part of the undertaking of the Metropolitan company (*l*), the County Council must give not less than three years' notice of their intention to exercise the power of purchase, and must not give such notice, nor purchase the undertaking of any supply company, unless they at the same time give notice of their intention to purchase and do purchase all the undertakings or parts of undertakings of all the London electric supply companies to which the power of purchase extends (*m*).

Terms of purchase.

The undertakings of the several London electric supply companies within the county, including all lands, buildings, works, materials, and plant provided or constructed under the powers of the Act, are, if purchased by the Council, to be paid for on the terms specified in s. 2 of the Electric Lighting Act, 1882 (*n*), subject, however, if notice is given for purchase in 1931, to exceptions as to certain undertakings of the Charing Cross and City companies (*o*).

Date of purchase.

The date at which the Council may proceed to purchase the undertakings of the London electric supply companies in pursuance of due notice is August 26th, 1931 (*p*); and if the Council do not serve notice for purchase at that date they may upon due notice purchase at the expiration of any subsequent period of ten years (*q*).

Saving clauses as to particular undertakings.

The enactments above referred to are, however, subject to savings for certain powers of purchase and other powers vested in the Corporation of the City and in the Camberwell and Lambeth Borough Councils in relation to certain undertakings (*r*).

Again, the County Council are under no obligation to purchase so much of the undertaking of the Metropolitan company in the county as is not purchaseable by a local authority, except such lands, buildings, works, materials and plant as shall have been provided or constructed by that company under the London Electric Supply Act, 1908; but the Council may purchase the part of the undertaking in question, if they think fit, on such terms, if not agreed

(*k*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s 23 (1); and see *ibid.*, s. 23 (6), providing that the undertakings (except undertakings or parts of undertakings used wholly for the supply of electricity outside the administrative county of London) of the London electric supply companies shall cease to be purchaseable otherwise than in accordance with the provisions of the section.

(*l*) See *ibid.*, s. 23 (5), and p. 626, *post.*

(*m*) *Ibid.*, s. 23 (1), (2).

(*n*) 51 & 52 Vict. c. 12, s. 2; see pp. 600—603, *ante.*

(*o*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 23 (3).

(*p*) The date is forty-two years after that of the passing of the Acts confirming the Provisional Orders of 1889, and had been fixed as the date for purchase by the local authority in subsequent Provisional Orders. The only unrevoked Order of earlier date is the Chelsea Order of 1886.

(*q*) *Ibid.*, s. 23 (5).

(*r*) *Ibid.*, ss. 28—30.

PART VI. Metropolitan Undertakings.

upon, as an arbitrator may think reasonable (*s*). And the prohibition against the exercise of the Council's power to purchase the undertaking of a supply company unless they exercise that power as regards all the companies, does not apply to that part of the Metropolitan company's undertaking (*t*).

Raising of charges.

1249. As from the date when the County Council give notice to purchase the undertaking of a supply company that company will become subject to restrictions as to raising their charges (*a*); and as from the same date the Council will be under certain obligations as to advancing money to the company to meet proper capital expenditure (*b*).

Advances of capital to company.

Expenses of County Council.

Discharge of purchase-money in stock.

1250. The County Council are enabled to raise capital for the purpose of a purchase or loan under the Act of 1908 and for defraying capital expenditure on a purchased undertaking (*c*); and are authorised and enabled to discharge the purchase-money for any undertaking partly in stock (*d*).

Expenses of the Council in connection with a purchased undertaking are to be defrayed as payments for general county purposes (*e*).

Purchase of specified companies' undertakings.

1251. The powers of the local authorities for the purchase of the undertakings of the specified companies are not transferred to the County Council. But certain provisions are made as to the exercise of those powers in relation to works executed under the London (Westminster and Kensington) Electric Supply Companies' Act, 1908 (*f*). It is, however, expected that the purchasing power of the County Council will be extended to the undertakings of the specified companies (*g*).

(*s*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 23 (4). The exception refers mainly, if not exclusively, to the part of the Metropolitan company's undertaking carried on under their Acts of 1905 and 1906 (5 Edw. 7, c. cc.; 6 Edw. 7, c. cciv.). These Acts give the company powers closely resembling those of the power companies referred to pp. 627—635, *post*, for the supply of electricity in bulk and for power in a large extra-metropolitan area, as well as in bulk to certain metropolitan undertakers; and the provisions of the Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), ss. 2, 3, as to purchase by the local authority do not apply to the works authorised or powers conferred by the Acts (see 5 Edw. 7, c. cc., s. 3; 6 Edw. 7, c. cciv., s. 3).

(*t*) London Electric Supply Act, 1908 (8 Edw. 7, c. clxvii.), s. 23 (2).

(*a*) *Ibid.*, s. 24.

(*b*) *Ibid.*, s. 26.

(*c*) *Ibid.*, s. 27.

(*d*) *Ibid.*, s. 25.

(*e*) *Ibid.*, s. 27.

(*f*) 8 Edw. 7, c. clxviii., ss. 5, 7.

(*g*) The specified companies are prohibited from opposing, except for limited purposes, any Bill introduced into Parliament by the Board of Trade or the London County Council for the purpose; see London (Westminster and Kensington) Electric Supply Companies Act, 1908 (8 Edw. 7, c. clxviii.), s. 12. Such a Bill was introduced as a public Bill by the President of the Board of Trade in the session of 1909, but, for want of time, was not proceeded with. The specified companies are also prohibited (*ibid.*, s. 11) from opposing, except for limited purposes, a Bill introduced by the Board of Trade, or the London County Council, or the metropolitan borough councils for conferring on such councils powers of mutual assistance resembling those conferred by the Act on the specified companies.

Part VII.—Special Legislation.

SECT. 1.—*Power Acts.*

SECT. 1. Power Acts.

Power undertakings.

1252. Acts have latterly been passed in some number authorising companies, usually spoken of as power companies, to establish and carry on electrical undertakings of which the main features are the generation of electricity on a large scale and its supply over a large area, not (at least as a main purpose of the undertaking) to ordinary consumers for lighting purposes, but in bulk to authorities and companies carrying on electrical undertakings of the usual type, and usually also to bodies and persons who require a supply of electricity for power.

Of the nature of the main provisions usually contained in Acts of this class, which are generally spoken of as "power Acts," the following summary will give a general idea (*h*).

Application of general legislation.

1253. The Act establishing the undertaking is declared (*i*) or assumed (*k*) to be a special Act (*l*) within the meaning of the

(*h*) The companies with undertakings in England and Wales generally spoken of as the power companies with their respective Acts, are (1909):—

The County of Durham Electric Power Supply Co. (63 & 64 Vict. c. ccxxxi.; 6 Edw. 7, c. clxxxii.; 9 Edw. 7, c. xxxvi.); the Lancashire Electric Power Co. (63 & 64 Vict. c. ccxxxv.; 4 Edw. 7, c. liv.; 6 Edw. 7, c. cxcix.); the North Metropolitan Electric Power Supply Co. (63 & 64 Vict. c. cclxxvi.; 2 Edw. 7, c. clvi.; 3 Edw. 7, c. cclxiii.; 5 Edw. 7, c. clxxvi.; 7 Edw. 7, c. xcviii.; 9 Edw. 7, c. xii.); the South Wales Electrical Power Distribution Co. (63 & 64 Vict. c. cclxxxii.; 2 Edw. 7, c. cxviii.; 5 Edw. 7, c. xlix.; 6 Edw. 7, c. cxcvii.; 8 Edw. 7, c. lxxi.); the Cleveland and Durham County Electric Power Co. (1 Edw. 7, c. civ.; 3 Edw. 7, c. xxv.); the Yorkshire Electric Power Co. (1 Edw. 7, c. cxvi.); the Derbyshire and Nottinghamshire Electric Power Co. (1 Edw. 7, c. cxxi.; 2 Edw. 7, c. xvii.; 4 Edw. 7, c. lxxvii.; 6 Edw. 7, c. cxlvii.); the Newcastle-upon-Tyne Electric Supply Co., Ltd. (2 Edw. 7, c. xxi.; 3 Edw. 7, c. clxxiv.; 6 Edw. 7, c. clviii.); the Cornwall Electric Power Co. (2 Edw. 7, c. xxxiv.); the Gloucestershire Electric Power Co. (2 Edw. 7, c. lv.); the Kent Electric Power Co. (2 Edw. 7, c. cxxvii.; 6 Edw. 7, c. clxv.; and see 9 Edw. 7, c. lxxviii.); the Leicestershire and Warwickshire Electric Power Co. (2 Edw. 7, c. cxxxi.; 4 Edw. 7, c. lxxiii.); the Somerset and District Electric Power Co. (3 Edw. 7, c. ccxiv.); the Shropshire, Worcestershire and Staffordshire Electric Power Co. (3 Edw. 7, c. ccxxxvii.; 5 Edw. 7, c. clx.; 6 Edw. 7, c. clxxxv.); the North Western Electricity and Power-Gas Co. (3 Edw. 7, c. ccxxxviii.; 4 Edw. 7, c. cix.); the North Wales Power and Traction Co., Ltd. (4 Edw. 7, c. ccxiii.); the Cumberland Electricity and Power-Gas Co. (6 Edw. 7, c. xcii.). The powers of the Carmarthenshire Electric Power Co. (established by the 3 Edw. 7, c. ccx.) were transferred to the South Wales company by the 5 Edw. 7, c. xlix., and the Carmarthenshire company was dissolved. As to the present position of the undertaking, see 8 Edw. 7, c. lxxi., preamble and s. 15.

There are, however, other companies with powers to a greater or less extent of a similar character to those of the companies above named, particularly the Metropolitan Electric Supply Co., Ltd. (see note (*s*), on p. 626, *ante*), and the West Cumberland Electric Tramways Co. (see 1 Edw. 7, c. ccli.; 3 Edw. 7, c. cviii.; 5 Edw. 7, c. viii.).

(*i*) See, *e.g.*, 63 & 64 Vict. c. ccxxxv., s. 2; 6 Edw. 7, c. xcii., s. 2.

(*k*) See, *e.g.*, 63 & 64 Vict. c. cclxxvi.: 3 Edw. 7, c. ccxxxviii.

(*l*) An express declaration that a power Act is to be deemed such a special Act is unnecessary.

SECT. 1. Power Acts.

Electric Lighting Acts, and of the Electric Lighting (Clauses) Act, 1899 (*m*), and the schedule to the Act of 1899, with extensive specified exceptions, is incorporated (*n*).

Undertaking not purchaseable by local authorities.

The undertaking is, however, always excepted from the provisions of the Act of 1888 (*a*), with regard to purchase by the local authority (*b*), or, in one or two instances, from the whole of that Act (*c*).

Definitions.

1254. Definitions, specially important in connection with the clauses by which the powers of the company for the supply of electricity are restricted (*d*), of the following expressions among others occur in the Acts :—

"Authorised distributors."

The expression "authorised distributors," or "authorised distributor" is used in the Acts of all the companies and is almost always defined as meaning in effect an authority, company, or person with powers under a Provisional Order or special Act (or in some cases under a licence, Order, or special Act) for the supply of electricity within the company's area of supply (*e*).

"Lighting authority."

The expression "lighting authority" is used in many of the Acts, being defined as any authority authorised by statute to undertake or contract for the lighting of streets, bridges, or public places within the company's area of supply (*f*).

"Authorised undertakers."

The expression "authorised undertakers" is used in many of the Acts; but is variously defined. It always includes authorised distributors and, whether under that name or not, lighting authorities (*g*); and frequently includes other bodies in addition (*h*).

Incorporation of company.

1255. In general the Act establishing the undertaking incorporates the company and contains provisions of the type usual in the case of

(*m*) 62 & 63 Vict. c. 19.

(*n*) The provisions of the schedule usually excluded are: s. 2 (or 2 (2), the exclusion of the remainder of the section being only a matter of form), ss. 3, 5, 7, 21—29, 30 (as regards a supply to authorised distributors, or, in some cases, as regards a supply in bulk), ss. 31—37, 41, 48, 75, 78, and sometimes, as a matter of form, ss. 83 and 84, which relate to Scotland and Ireland. The above provisions are excluded in all cases, except that the 63 & 64 Vict. c. ccxxxv., does not exclude ss. 75 and 78. Other provisions occasionally excluded are ss. 4, 6, 8, 9, 30 (entirely), ss. 40, 42—44, 49, 58, 60—68, 69 (3), 77 (but only where the excluding Act contains an equivalent), and s. 81.

Special provisions as to the applicability of the schedule are made by the Newcastle company's Acts; see 3 Edw. 7, c. clxxiv., s. 20; 6 Edw. 7, c. clviii., s. 4.

(*a*) 51 & 52 Vict. c. 12, ss. 2, 3.

(*b*) See, *e.g.*, 63 & 64 Vict. c. ccxxxv., s. 2; 6 Edw. 7, c. cxcix., s. 2.

(*c*) See, *e.g.*, 7 Edw. 7, c. xcviii., s. 4. And see 6 Edw. 7, c. clviii., s. 4, the provisions of which excluding the Act of 1888 are of special character.

(*d*) See p. 630, *post*.

(*e*) See, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 4; 4 Edw. 7, c. ccxiii., s. 4. The expression was not used in the Lancashire company's original Act (63 & 64 Vict. c. ccxxxv.), but is used in the amending Act of 1906 (6 Edw. 7, c. cxcix.). The 6 Edw. 7, c. xcii., s. 6, confines the expression to authorities etc. acting under Provisional Order.

(*f*) See, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 4; 6 Edw. 7, c. cxcix., s. 4.

(*g*) See, *e.g.*, 1 Edw. 7, c. cxvi., s. 4; 6 Edw. 7, c. cxcix., s. 4.

(*h*) See, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 4, where the expression is defined as including, besides authorised distributors and lighting authorities, all bodies, putting it shortly, with statutory powers for the use of electricity within the company's area of supply, and 3 Edw. 7, c. ccxxxvii., s. 4.

statutory companies established for *quasi*-public purposes with regard to its finances, management, and proceedings (*i*). But in two instances authority for carrying on a power undertaking has been given to an existing company registered under the Companies Acts (*k*).

General powers of company.

1256. The Act establishing the undertaking almost always contains a clause or clauses stating, in general terms, the powers of the company for carrying it on (*l*).

Acquisition of land.

1257. The company are almost always given powers for the compulsory acquisition of specified lands (*m*); and they have always powers for the acquisition of land by agreement (*n*). The Lands Clauses Acts apply with reference to the acquisition of land by the company (*o*); and the company's Acts almost always contain ancillary provisions as to the acquisition of land.

Generating stations.

1258. The company are almost always expressly authorised to erect and work a generating station on the land which they are authorised to acquire compulsorily (*p*), or on a specified part of it (*q*);

(*i*) See title COMPANIES, Vol. V.

(*k*) See 2 Edw. 7, c. xxi.; 4 Edw. 7, c. ccxiii.

(*l*) See, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 7, extended by 6 Edw. 7, c. clxxxii., s. 6; 63 & 64 Vict. c. cclxxxii., ss. 6, 9; 3 Edw. 7, c. ccxiv., s. 7; 6 Edw. 7, c. xcii., s. 8. The clauses in question, which differ considerably from one another, are of the same general character as s. 10 of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), as to which, see p. 561, *ante*.

(*m*) See, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 34; 7 Edw. 7, c. xcviii., s. 29.

(*n*) A general power to acquire lands by agreement for the purposes of the undertaking is usually given by the general clause defining the company's powers (see, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 7; 6 Edw. 7, c. clxxxii., s. 6); and the company have in any case general power to acquire land by agreement under the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 10. Many of the Acts, however, expressly authorise the company to acquire land by agreement (in addition to any land they are authorised to acquire compulsorily) to an amount not exceeding a specified limit (see, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 39; 6 Edw. 7, c. xcii., s. 14); and in such cases the company could not apparently acquire land in excess of that limit under their more general powers. A specific power to acquire additional land by agreement is generally coupled with an express provision preserving the liability of the company in case of nuisance from works on such lands, though where s. 81 of the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), applies to the undertaking, such a provision seems superfluous.

(*o*) In some cases the Lands Clauses Acts are incorporated in their entirety with the company's Acts (see, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 2; 7 Edw. 7, c. xcviii., s. 2). In other cases the provisions of the Acts with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the entry upon lands by the promoters, are alone incorporated (see, *e.g.*, 63 & 64 Vict. c. ccxxxv., s. 3; 4 Edw. 7, c. ccxiii., s. 3), but in such cases the other provisions of the Lands Clauses Acts apply with reference to the acquisition of land by the company by virtue of their incorporation with the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56, s. 12); and it is doubtless in view of this circumstance that the restricted form of incorporation has been adopted. The 2 Edw. 7, c. xxi., which gives no compulsory powers for the acquisition of land, does not incorporate any provisions of the Lands Clauses Acts, but leaves the availability of the Acts to depend entirely upon the Act of 1882. See, generally, title COMPULSORY PURCHASE OF LAND ETC., Vol. VI., p. 1.

(*p*) See, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 34; 3 Edw. 7, c. ccxiv., s. 30.

(*q*) See, *e.g.*, 63 & 64 Vict. c. ccxxxv., s. 30; 2 Edw. 7, c. cxxxi., s. 30.

SECT. 1. Power Acts.

and that generating station is generally, though not always, excepted from the provisions of the schedule to the Electric Lighting (Clauses) Act, 1899 (*r*), preserving the undertakers' liability for nuisance (*s*). The erection of a generation station on other lands is frequently in effect prohibited by being declared unauthorised (*t*); but in several cases enactments to this effect have been repealed, and authority for the erection of generating stations on lands acquired by agreement has been given (*a*).

Powers as to works.

1259. The company have in the main the usual powers of undertakers under the Electric Lighting Acts for the execution of works in streets etc. (*b*). But the restrictions on overhead lines (*c*) are usually relaxed (*d*), as also are those (*e*) on interference with railways and tramways (*f*); and on the other hand the local authorities are given a certain control over the route in which the company's lines are to be laid (*g*), and the company are subject as regards their works to more or less numerous and stringent protective clauses (*h*).

Restrictions on power to supply electricity.

1260. The powers of the company for the supply of electricity are always subject to restrictive clauses, which constitute the key-note of the legislation, and which, while differing materially in different cases, are usually of the following character (*i*):—

The company may supply only authorised undertakers and

(*r*) 62 & 63 Vict. c. 19, schedule, s. 81.

(*s*) See, *e.g.*, 1 Edw. 7, c. cxvi., s. 3; 7 Edw. 7, c. xcviii., s. 4. The 2 Edw. 7, c. xxi., does not incorporate s. 81 of the schedule at all, but, while authorising the erection of generating stations on land acquired by agreement, specially preserves the liability of the company for nuisance caused on lands used for generating stations (*ibid.*, s. 7). The 6 Edw. 7, c. clxv., s. 33, renders generating stations which had, by 2 Edw. 7, c. cxxvii., s. 3, been excepted from s. 81, subject to the section in the event of nuisances due to certain causes. Compare the metropolitan legislation referred to pp. 616—626, *ante*.

(*t*) See, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 39; 1 Edw. 7, c. cxvi., s. 30.

(*a*) See, *e.g.*, 4 Edw. 7, c. liv., s. 2, repealing a previous prohibition; 5 Edw. 7, c. xlix., s. 9, giving power for the erection of a generating station where there had been no previous prohibition. Express power to erect a generating station on additional lands is generally given subject to a clause preserving the company's liability for nuisance, though, except where s. 81 of the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), does not apply, such a clause seems superfluous.

(*b*) The provisions of the schedule to the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), as to works (*ibid.*, ss. 11—20), are among the provisions of that schedule always incorporated with the company's Acts.

(*c*) Under the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 14, and the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 10 (b).

(*d*) For the usual clause in this behalf, see, *e.g.*, 4 Edw. 7, c. ccxiii. s. 18; 6 Edw. 7, c. xcii., s. 20. For clauses of special character, see 6 Edw. 7, c. cxlvii., s. 22; c. clxv., s. 22.

(*e*) Under the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 13, and the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, s. 12.

(*f*) See, *e.g.*, 63 & 64 Vict. c. ccxxxv., s. 5; 6 Edw. 7, c. clxxxii., s. 4.

(*g*) See, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 15, amended and extended by 6 Edw. 7, c. clxxxii., s. 7.

(*h*) See p. 635, *post*.

(*i*) The Lancashire company's original Act (63 & 64 Vict. c. ccxxxv.) is not drafted on the usual lines; but, particularly in view of the amending 6 Edw. 7,

persons requiring a supply for power (*k*), or sometimes only authorised distributors and persons requiring a supply of power (*l*).

They must not supply energy for lighting except to authorised undertakers or authorised distributors, as the case may be (*m*), except that a limited user for lighting of energy supplied for power is permitted (*n*).

The company are prohibited, subject usually to very important exceptions (*o*), from supplying energy in any area forming at the date of the company's Act part of the area of supply of authorised distributors without the consent of those distributors. Usually, however, such consent must not be unreasonably withheld, and the company may appeal, on the question of reasonableness, to the Board of Trade if it is withheld; and usually the withholding of the consent is to be deemed unreasonable unless the distributors

c. cxcix., the position of the company does not in substance differ in character from that of the other companies. And the restrictions are of special character in the case of the Cornwall (2 Edw. 7, c. xxxiv., s. 43), Kent (2 Edw. 7, c. cxxvii., s. 51; 6 Edw. 7, c. clxv., s. 16), and North Metropolitan (63 & 64 Vict. c. cclxxvi., ss. 7, 11; 2 Edw. 7, c. clvi., s. 3; 7 Edw. 7, c. xcviii., s. 7) companies, particularly as regards the capacity of the company to supply electricity for lighting. Exceptions from the restrictions are frequently created by sections specially authorising the supply by agreement of particular consumers, or classes of consumers, including in many cases consumers outside the area of supply (see, *e.g.*, 6 Edw. 7, c. clviii., ss. 9—16; 9 Edw. 7, c. xii., s. 5, the powers of which for supply beyond the area of supply are exceptionally wide).

(*k*) See, *e.g.*, 63 & 64 Vict. c. ccxxxi., ss. 7—10, extended by 6 Edw. 7, c. clxxxii., s. 7; 6 Edw. 7, c. xcii., s. 22. In 7 Edw. 7, c. xcviii., s. 6, it is provided that a supply for power shall be deemed to mean and include a supply for any public or private purposes as defined by the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 3 (3), (4) (see p. 547, *ante*), other than the purpose of lighting only; but this appears to be the only case in which the expression is defined.

(*l*) See, *e.g.*, 63 & 64 Vict. c. cclxxxii., s. 36; 2 Edw. 7, c. xxi., s. 15.

(*m*) A supply for lighting except in the excepted cases is generally expressly prohibited (see, *e.g.*, 63 & 64 Vict. c. cclxxxii., s. 36; 7 Edw. 7, c. xcviii., s. 7); but sometimes is merely unauthorised (see, *e.g.*, 63 & 64 Vict. c. ccxxxi., ss. 6, 7, extended by 6 Edw. 7, c. clxxxii., s. 7).

(*n*) In some cases there is a simple permission to use the energy for lighting any premises on any part of which the power is utilised (see, *e.g.*, 63 & 64 Vict. c. clxxxii., s. 36; 7 Edw. 7, c. xcviii., s. 7). In others a similar permission is coupled with more or less elaborate provisions, limiting the amount of the energy that may be used for lighting as compared with that used for power, and guarding against the improper use of the energy for lighting (see, *e.g.*, 3 Edw. 7, c. ccxiv., s. 50; 3 Edw. 7, c. ccxxxviii., s. 26; 6 Edw. 7, c. cxcix., s. 5). The 2 Edw. 7, c. lv., s. 47, and 4 Edw. 7, c. ccxiii., s. 35, expressly allow the use of the energy for lighting vehicles in certain cases.

(*o*) Where the company's powers of supply are confined to authorised distributors and persons requiring a supply for power, there is sometimes no exception (see, *e.g.*, 63 & 64 Vict. c. cclxxxii., s. 36; 1 Edw. 7, c. civ., s. 54). Where the powers are confined to the supply of authorised undertakers and persons requiring a supply for power, the exception is sometimes confined to a supply to authorised undertakers (see, *e.g.*, 1 Edw. 7, c. ccxxi., s. 52; 4 Edw. 7, c. ccxiii., s. 35). In other cases the exception extends to authorised undertakers or authorised distributors, as the case may be, and to bodies such as railway, tramway, and water companies, and canal and dock proprietors (see, *e.g.*, 1 Edw. 7, c. cxvi., s. 48; 3 Edw. 7, c. ccxxxviii., s. 26). Exceptions of peculiar character are made by 63 & 64 Vict. c. ccxxxi., s. 11, amended by 6 Edw. 7, c. clxxxii., s. 7; and by 6 Edw. 7, c. cxcix., s. 5.

SECT. 1. Power Acts.

are themselves able and willing to furnish the required supply upon terms and within a time which are reasonable having regard to the terms on and time within which the company are able and willing to furnish the supply (*p*). But there are cases where the discretion of the distributors as to the grant or withholding of consent is unfettered (*q*).

In connection with the restrictive clauses, provision is always made to meet cases where part of the company's area of supply becomes included within the area of supply of authorised distributors in the future (*a*).

Obligations on company to supply electricity.

1261. The company are always required to supply authorised undertakers, or authorised distributors, as the case may be, and to provide the necessary electric lines for supplying the maximum power with which they are entitled to be supplied (*b*), upon their giving notice of their requirements and entering into a contract with the company to take, generally for seven years (*c*), a supply of such amount that at current rates the payment for that amount will be at least 20 per cent. per annum upon the expense of laying the necessary line, etc. (*d*).

In some cases a clause containing provisions to the effect above stated extends not only to authorised undertakers or distributors, but also to other consumers (*e*). But more usually the obligation to supply such consumers takes the form of an obligation to supply upon terms to be agreed, or, failing agreement, determined, with due regard to specified considerations, by arbitration (*f*).

In one or two cases an obligation of the type above mentioned to supply authorised undertakers is confined to cases where the undertakers contract to take their whole supply from the company, and

(*p*) See, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 11, amended by 6 Edw. 7, c. clxxxii., s. 37; and 6 Edw. 7, c. clxxxv., s. 42, the provisions of which are specially elaborate.

(*q*) See, *e.g.*, 6 Edw. 7, c. cxcix., s. 5. And see 1 Edw. 7, c. cxvi., s. 48; 2 Edw. 7, c. cxxvii., s. 51, under which the discretion is unfettered in the case of a local authority, while there are the usual restrictions in other cases.

(*a*) The clauses on the subject differ, but are usually mainly directed to authorising the insertion of clauses relating to the company in future Provisional Orders (see, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 11; 7 Edw. 7, c. xcviii., s. 8). But in some cases a local authority, constituted authorised distributors after the company's Act (or within a limited time thereafter), are put (subject to provisions as to existing supplies) in the like position as if so constituted before the Act (see, *e.g.*, 1 Edw. 7, c. cxvi., s. 48 (4); 6 Edw. 7, c. cxcix., s. 5 (2)).

(*b*) The maximum power with which consumers are entitled to be supplied is usually defined as being of such amount as they require to be supplied with, not exceeding what may be reasonably anticipated (questions as to what may be reasonably anticipated falling to be determined by arbitration) as the maximum consumption (see, *e.g.*, 63 & 64 Vict. c. ccxxxv., s. 45; 7 Edw. 7, c. xcviii., s. 11). But there are simpler definitions (see, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 8 (4 d)).

(*c*) The 63 & 64 Vict. c. ccxxxi., s. 8, does not require the contract to be for any specified period.

(*d*) See, *e.g.*, 63 & 64 Vict. c. cclxxxii., s. 38; 6 Edw. 7, c. xcii., s. 23.

(*e*) See, *e.g.*, 1 Edw. 7, c. cxvi., s. 62; 2 Edw. 7, c. xxxiv., s. 45.

(*f*) See, *e.g.*, 63 & 64 Vict. c. cclxxxii., s. 40; 6 Edw. 7, c. clxxxxii., s. 8; 7 Edw. 7, c. xcviii., s. 9. In 2 Edw. 7, c. cxxxi., ss. 55, 57, clauses of the two types are curiously blended together.

a distinct obligation is imposed on the company to furnish such undertakers with a partial supply upon terms to be agreed or settled by arbitration (*g*).

The obligations in question are in general secured by penalties (*h*).

The company are usually empowered to require security for payments to accrue due from consumers, other than consumers of specified classes, under their contracts (*i*).

Equality clauses.

1262. Many of the companies' Acts contain clauses to the effect that the company shall grant any authorised undertakers, or authorised distributors, as the case may be, terms as favourable as those granted to any other such undertakers or distributors whose circumstances are similar (*k*); and in one or two instances the clause, or a like clause, applies also as between other consumers (*l*).

Prices chargeable.

1263. The prices which the company may charge are always limited (*m*), subject sometimes to a provision to the effect that neither the limiting section nor anything in the Acts of 1882, 1888, or 1899 shall prevent the company from making agreements under certain powers in their special Act (*n*). It is sometimes provided that the prices shall include the transformation of the energy to meet the reasonable requirements of the consumer (*o*), and there are frequently provisions as to the methods of charge (*p*), and sometimes also as to changes in those methods (*q*).

Relation of price to dividend.

1264. The company's charges and their dividends are in almost all cases brought into connection by a clause of one of the following types: Either the dividend is limited to 8, or more rarely 10, per

(*g*) See 63 & 64 Vict. c. ccxxxi., ss. 8—10; c. cclxxvi., ss. 8—10. See also, as to the supply of premises having a separate supply, the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 15 (see p. 590, *ante*), sections similar to which are contained in some of the companies' Acts (*e.g.*, 7 Edw. 7, c. xcviii., s. 21).

(*h*) Usually by penalties directly imposed by the company's Act as regards authorised undertakers or authorised distributors, and by the penalties imposed by s. 30 of the schedule to Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), as incorporated with the company's Act, as regards other consumers (see, *e.g.*, 63 & 64 Vict. c. cclxxxii., s. 39; 4 Edw. 7, c. ccxiii., s. 37).

(*i*) See, *e.g.*, 1 Edw. 7, c. cxvi., s. 62; 6 Edw. 7, c. xcii., ss. 23, 25.

(*k*) See, *e.g.*, 1 Edw. 7, c. civ., s. 55; 6 Edw. 7, c. xcii., s. 23.

(*l*) See, *e.g.*, 1 Edw. 7, c. cxvi., s. 62; 6 Edw. 7, c. xcii., s. 25. The equality clauses of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), ss. 19, 20, apply in addition to the equality clause or clauses, if any, contained in the company's special Act, except that in one case s. 19 of the Act of 1882 is declared inapplicable (63 & 64 Vict. c. ccxxxv., s. 2; but see 6 Edw. 7, c. cxcix. Provisions in 63 & 64 Vict. cc. ccxxxi., cclxxvi., excluding s. 19 among other sections of the Act of 1882, have been repealed). In 4 Edw. 7, c. ccxiii., s. 36, there is an equality clause confined to contracts entered into after the expiry of a certain period after the passing of the Act.

(*m*) For a simple clause limiting the prices, see, *e.g.*, 63 & 64 Vict. c. cclxxvi., s. 29.

(*n*) See, *e.g.*, 63 & 64 Vict. c. ccxxxv., s. 46; 6 Edw. 7, c. cxcix., s. 12; 6 Edw. 7, c. clxxxii., s. 14.

(*o*) See, *e.g.*, 63 & 64 Vict. c. ccxxxv., s. 46; 3 Edw. 7, c. ccxxxviii., s. 28.

(*p*) See, *e.g.*, 1 Edw. 7, c. civ., s. 62; 6 Edw. 7, c. cxcix., s. 12 (2).

(*q*) See, *e.g.*, 1 Edw. 7, c. cxvi., ss. 66, 67.

SECT. 1. Power Acts.

cent. per annum, subject to provisions permitting an increase in the dividend according to a sliding scale if the prices fall below the maximum, and requiring a diminution of charges if the dividend exceeds the 8 or 10 per cent. Or the dividend is limited to 8, or more rarely 10, per cent. per annum, subject to a provision for the raising or lowering of that rate of dividend on a sliding scale according as the company's charges fall short of or exceed the "standard price" of $2\frac{1}{2}d.$ or in a few instances $3d.$ per unit. In either case the company are allowed, in addition to such dividends, to make good deficiencies below the 8 or 10 per cent. in previous dividends (*r*).

For the purposes of such clauses the full dividend, inclusive of income tax, must be looked to (*s*).

Revision of prices.

1265. The maximum prices and the provisions, if any, as to the relation of price to dividend are in all cases subject to periodical revision, on due application, by the Board of Trade (*t*).

Contracts.

1266. The company have in all cases powers for making and carrying into effect contracts relating to their undertaking (*u*).

Application for Provisional Orders.

1267. The company are in many cases authorised to apply for Provisional Orders under the Electric Lighting Acts (*v*); but as yet very few Orders have been granted to the power companies.

Transfer of undertakings to company.

1268. In many cases the company are entitled to take over, by agreement, electrical undertakings authorised for localities within their area of supply (*w*); and such transfers have been carried out in several instances.

(*r*) See, *e.g.* (for a clause of the first type), 63 & 64 Vict. c. ccxxxi., s. 31; 2 Edw. 7, c. xxxiv., s. 51; and (for a clause of the second type) 63 & 64 Vict. c. cclxxxii., s. 46; 4 Edw. 7, c. ccxiii., s. 43. There is no such clause applicable to the North Western or Cumberland companies, whose undertakings embrace the supply of power gas as well as of electricity; but in their case a share of any surplus profits beyond what is necessary for a dividend of 10 per cent. is applicable in reduction of charges (3 Edw. 7, c. ccxxxviii., s. 99; 6 Edw. 7, c. xcii., s. 95). In the case of the Shropshire etc. company a clause of the usual kind as to the relation of price to dividend has been repealed except as regards the limitation to 10 per cent. and the power to make up previous deficiencies (6 Edw. 7, c. clxxxv., s. 46).

(*s*) See *Ashton Gas Co.* v. *A.-G.*, [1906] A. C. 10.

(*t*) See, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 33, amended by 6 Edw. 7, c. clxxxii., s. 15; 6 Edw. 7, c. xcii., s. 93.

(*u*) They have general powers in this behalf under the provisions of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 10, and usually also under similar provisions in the clause in their special Act setting out their general powers. The Acts of all the companies again contain general clauses (differing much from each other) authorising contracts between the company and their consumers (see, *e.g.*, 63 & 64 Vict. c. ccxxxi., s. 12; 63 & 64 Vict. c. ccxxxv., s. 48, extended by 6 Edw. 7, c. cxcix., s. 17; 3 Edw. 7, c. ccxxxvii., s. 61; 6 Edw. 7, c. xcii., s. 104).

(*v*) In some cases the company are given a bare power to apply for Provisional Orders (see, *e.g.*, 63 & 64 Vict. c. cclxxxii., s. 37; 4 Edw. 7, c. lxxvii., s. 3). In others a power of this kind is coupled with provisions as to the rights etc. of the company if an order is granted to them (see, *e.g.*, 2 Edw. 7, c. lv., s. 60; c. cxxxi., s. 64).

(*w*) The typical clause in this behalf empowers the company to acquire from the undertakers, by agreement, any undertaking, authorised by Provisional

SECT. 1.
Power Acts.

1269. The Acts of all the companies contain clauses, often numerous and elaborate, for the protection of the interests of particular bodies and persons (*x*). In particular there are in all cases clauses for the protection of the councils of the counties in which the company's area of supply is comprised, more especially in regard to the placing of lines and works by the company in main roads and bridges, and dealings by the county council with such roads and bridges in which lines and works of the company have been placed. And there are frequently clauses of the same general character for the protection of particular borough and district councils in regard to streets, sewers etc. under their control (*y*). There are further numerous clauses prohibiting or restricting with greater or less stringency the exercise of the company's powers within particular areas either absolutely or without the consent (the discretion as to withholding which is sometimes absolute and sometimes subject to review) of the local authority or of some other body or person. And there are numerous and important clauses for the protection of such bodies as railway, canal, tramway, gas, and water companies, and of particular landowners and others.

Protective clauses.

SECT. 2.—*Provisional Orders and Confirming Acts.*

1270. In addition to the clauses which, so far as they are appropriate to the particular case, are to be found in all Provisional Orders authorising electrical undertakings, such Orders very commonly contain special clauses. The following are some of the provisions most usually contained in such clauses:—

Special clauses in Provisional Orders.

1271. Power is frequently given to the undertakers, usually within a limited time after the commencement of the Order, but occasionally at any time (*z*), to transfer the undertaking, or in some cases the undertaking or any part of it (*a*), with the approval of the Board of Trade, to some named company or authority (*b*).

Power to transfer undertaking.

Order granted before the company's Act, in the company's area of supply, empowers the undertakers, with the approval of the Board of Trade, to transfer the undertaking to the company; and contains ancillary clauses of which the more important usual subject-matters are, the charges to be made for energy supplied under the Order, the contingency of the purchase by the local authority of the undertaking authorised by the Order, and the application of capital received by the local authority in respect of the transfer (see, *e.g.*, 4 Edw. 7, c. liv., s. 4, amended by 6 Edw. 7, c. cxcix. s. 19; 6 Edw. 7, c. clviii., s. 7; 7 Edw. 7, c. xcviii., s. 22). Similar powers of transfer in the case of Provisional Orders subsequent to the company's Act are sometimes inserted in those Orders.

(*x*) The protective clauses in the Acts are too varied to admit of anything in the nature of an analysed summary in the present title. The fact that a clause is expressed to be for the protection of a particular person does not give him a right of action in respect of a breach of the section causing him no actionable injury. See *A.-G.* v. *Pontypridd Waterworks Co.*, [1908] 1 Ch. 388.

(*y*) In 3 Edw. 7, c. ccxiv., there is a clause of the kind for the protection of all county and district councils throughout the area of supply.

(*z*) See, *e.g.*, the Frome Order, scheduled to 6 Edw. 7, c. cx.; the Litherland Order, scheduled to 5 Edw. 7, c. cxiii.

(*a*) See *e.g.*, the Sowerby Bridge Order, scheduled to 8 Edw. 7, c. cxvii.

(*b*) See, *e.g.*, the Hendon Order, scheduled to 8 Edw. 7, c. cxvii.; the

SECT. 2. **Provisional Orders and Confirming Acts.**

Where the Order is granted to individuals power is almost invariably (*c*) given to them to transfer the undertaking, with the consent of the Board of Trade, and within a limited time, either to a named company, or to a limited liability company to be approved by the Board, and sometimes alternatively to a local authority, and the exercise of the powers of the Order is prohibited unless and until such a transfer is effected. In recent clauses of the kind power is reserved to the Board to revoke the Order if the transfer is not effected (*d*). Similar provisions are occasionally made where the Order is granted to a local authority (*e*) or to a limited company (*f*).

Special power to local authority to purchase.

1272. The purchase of the undertaking, or the part of it within their district, by a local authority is often authorised. A clause in this behalf generally empowers the local authority to require the undertakers to sell, upon specified terms, either at any time (*g*), or at any time after the expiration of a stated period (*h*), or, most frequently, at a stated time (*i*) or at stated times (*k*). In some cases, where the local authority have such compulsory powers of purchase at particular times, alternative provision is made for purchase by them on agreed terms at any time (*l*); and in other cases a purchase by a local authority on agreed terms is authorised, though no compulsory power of purchase is given them (*m*).

Litherland Order, scheduled to 5 Edw. 7, c. cxiii. The power is often expressed as a power to transfer for such period as the Board of Trade approve (see, *e.g.*, the Llandaff Order, scheduled to 8 Edw. 7, c. cxvii.); but, under such a power, the Board might doubtless approve a transfer out and out. In many cases not only is the consent of the Board of Trade required, but the transfer is to be effected by deed approved by the Board. Where an undertaking was transferred under a power of the kind by an approved deed, a collateral agreement between the parties forming part of the consideration, of the existence of which the Board were aware, but which they had declined to approve on the ground that they were not concerned with it, was held to be good (*Lambeth Corporation* v. *South London Electric Supply Corporation* (1907), 96 L. T. 440, C. A.). In *Audenshaw Urban District Council* v. *Manchester Corporation* (1907), 71 J. P. 342, the terms of a deed of transfer of an electric undertaking were enforced by the Palatine Court of Lancaster by a decree for specific performance.

(*c*) Orders have been granted to owners of estates without provisions of the kind (see, *e.g.*, the Port Dinorwic Order, scheduled to 3 Edw. 7, c. xlvii.).

(*d*) See, *e.g.*, the Holsworthy and Staines Orders, scheduled to 9 Edw. 7, c. cxli.

(*e*) See, *e.g.*, the Heswall Order, scheduled to 8 Edw. 7, c. cxv.

(*f*) See, *e.g.*, the Lichfield Order, scheduled to 5 Edw. 7, c. cxiv.

(*g*) See, *e.g.*, the Lytham Order, scheduled to 5 Edw. 7, c. cxiv.

(*h*) *E.g.*, at any time after the expiration of twenty-five years from the commencement of the Order (Holsworthy Order, scheduled to 9 Edw. 7, c. cxli.).

(*i*) *E.g.*, at the expiration of sixteen years from the commencement of the Order (Carmarthen Order, scheduled to 8 Edw. 7, c. cxv.).

(*k*) *E.g.*, within six months after the expiration of twenty-one, twenty-eight, or thirty-five years (Minehead Order, scheduled to 7 Edw. 7, c. lvii.), or at the expiration of fourteen, twenty-one, twenty-eight or thirty-five years (Wealdstone Order, scheduled to 6 Edw. 7, c. cx.), from the commencement of the Order.

(*l*) See, *e.g.*, the Gravesend Order, scheduled to 5 Edw. 7, c. cxcii.

(*m*) See, *e.g.*, the Northampton Order, scheduled to 4 Edw. 7, c. clxxviii. In some Orders there is a clause expressed as empowering the local authority to require the undertakers to sell upon terms to be agreed (see, *e.g.*, the Tavistock Order, scheduled to 4 Edw. 7, c. clxxvi.; Boston Order, scheduled to 6 Edw. 7,

Purchase price.

In cases of compulsory purchase the purchase price is always to be determined by arbitration if not agreed; but the provisions as to the basis on which it is to be determined vary. In some cases the price is to be the amount of the capital properly expended on the undertaking (*n*), usually with an added percentage which is often made to vary according to the date of the purchase (*o*), and subject in some cases to special adjustment (*p*). In many cases the price is to be the fair market value of the undertaking as a going concern (*q*). But many Orders contain clauses of special character on the subject (*r*). In some instances alternative bases for determining the purchase price are applicable at the option of the local authority (*s*) or according to the date when the purchase is effected (*t*).

Such powers of purchase are, almost always at least, in addition to those which the Electric Lighting Act, 1888 (*a*), confers on the local authority (*b*). But in some cases the Order varies the date,

c. cxxix.), but such a clause would appear to operate only as conferring a power of sale and purchase by mutual agreement.

(*n*) See, *e.g.*, the Barnet Order, scheduled to 5 Edw. 7, c. cxiv.

(*o*) See, *e.g.*, the Wealdstone Order, scheduled to 6 Edw. 7, c. cx.; the Henley-on-Thames Order, scheduled to 6 Edw. 7, c. cxxix.

(*p*) See, *e.g.*, the Walton-upon-Thames Order, scheduled to 4 Edw. 7, c. clxxvii.

(*q*) See, *e.g.*, the Holsworthy Order, scheduled to 9 Edw. 7, c. cxli.

(*r*) The formulæ that have been employed to define the purchase price are very varied, and some of them are of great elaboration. The following are three examples from recent Orders:—"A sum equal to the fair market value of the undertaking as a going concern but without any allowance for compulsory sale" (Ware Order, scheduled to 5 Edw. 7, c. cxiv.). "Fair value" of the undertaking "and in addition thereto a further sum equal to the value of the goodwill of the business of the undertakers . . . as a going concern" (Croydon Rural Order, scheduled to 5 Edw. 7, c. cxcii.). "Fair market value of the lands buildings works materials and plant . . . purchased with the addition of a sum of 10 per cent. upon that value in respect of goodwill compulsory purchase and severance" (Bury Order, scheduled to 5 Edw. 7, c. lxxix.). Under some of the formulæ the contingency that the undertaking is liable to purchase under the Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), s. 2, may have to be taken into consideration in calculating the purchase price (see *Re Southampton Tramways Co. and Southampton Corporation* (1899), 81 L. T. 652, C. A.). Where a Provisional Order provided for the transfer of an undertaking to a municipal corporation in consideration of the issue or transfer to the undertakers of such amount of corporation stock as would produce by interest a given annuity, and, by Provisional Order under the Public Health Acts coming into operation one day later than that under the Electric Lighting Acts, a power theretofore possessed by the corporation to issue irredeemable stock was abrogated, it was held that the purchase price under the last-mentioned Provisional Order was an amount of irredeemable stock; that the corporation were not thereby impliedly authorised to issue such stock; and that the power of purchase was consequently in abeyance (*Sheffield Corporation* v. *Sheffield Electric Light Co.*, [1898] 1 Ch. 203).

(*s*) See, *e.g.*, the Ludlow Order, scheduled to 5 Edw. 7, c. cxiv.

(*t*) See, *e.g.*, the Stockport and Kidderminster Order, scheduled to 6 Edw. 7, c. cxxx.

(*a*) 51 & 52 Vict. c. 12, ss. 2, 3.

(*b*) An Order conferring a special power of purchase almost always contains an express saving for the power under the Act of 1888; and even where this is not so (see, *e.g.*, the Halesowen Order, scheduled to 8 Edw. 7, c. cxv.), the latter power is not necessarily taken away (see *Wallasey United Tramways and Omnibus Co.* v. *Wallasey Urban District Council* (1900), 17 T. L. R. 152, H. L.).

SECT. 2. Provisional Orders and Confirming Acts.

and in minor respects the terms, upon which a purchase under the Act of 1888 may be effected (*c*).

It is believed that no purchase of an electric undertaking by a local authority has as yet been carried out under powers in that behalf conferred by a Provisional Order (*d*).

Grant of new Order to enable agreement for purchase to be carried out.

1273. In a few cases where a local authority have been desirous of purchasing an undertaking, and the undertakers have been willing to sell, but their Provisional Order has contained no power in that behalf, the carrying out of the transaction has been rendered possible by the grant to the local authority of a new Provisional Order authorising the contemplated sale, but, except for that purpose, not to commence until the sale has been effected, and containing a clause rescinding the vendors' Order as from the commencement of the new Order (*e*).

Special clauses in confirming Acts.

1274. It is the exception in the earlier Electric Lighting Orders Confirmation Acts to find any substantive provisions beyond the bare confirmation of the scheduled Orders. Latterly, however, it has become the rule rather than the exception to insert certain substantive provisions in the Acts.

Bridges and main roads.

Of these the most usual are provisions as to the exercise by county councils of their powers with regard to bridges, and sometimes also of their powers with regard to roads, in which works of the undertakers under the scheduled Orders are placed (*f*).

Streets outside area of supply; connections between generating stations; repeal of Provisional Orders.

Other provisions not infrequently to be found in such Acts are: Provisions empowering particular undertakers, for special reasons, to break up streets outside the area of supply (*g*); provisions authorising the connection of the generating stations and systems of different undertakings, and the use of such generating stations in common for the purposes of such undertakings (*h*); and provisions for the repeal of Provisional Orders confirmed by earlier Acts (*i*).

SECT. 3.—*Local Authorities' Acts.*

Clauses in Acts of local authorities.

1275. Clauses dealing with electrical undertakings of local authorities are very often to be found in local Acts of an omnibus character passed at the instance of such authorities.

Some of the most usual clauses contain provisions similar to those now enacted in a general form by certain sections of the Electric Lighting Act, 1909 (*k*). Other usual clauses of the kind are:—

Undedicated streets.

A clause empowering the local authority to lay apparatus in undedicated streets and roads.

(*c*) See, *e.g.*, the Walton-upon-Thames Order, scheduled to 4 Edw. 7, c. clxxvii.; the Aston Manor Order, scheduled to 7 Edw. 7, c. liv.

(*d*) As to borrowing by the local authority for the purpose, see p. 553, *ante*.

(*e*) See, *e.g.*, the Fleetwood Order, scheduled to 8 Edw. 7, c. cxv.

(*f*) See, *e.g.*, 9 Edw. 7, c. cxli.

(*g*) See, *e.g.*, 8 Edw. 7, c. cxv., s. 5. Provisions of the kind may now be inserted in Provisional Orders under the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 3.

(*h*) See, *e.g.*, 7 Edw. 7, c. lvii., s. 5.

(*i*) See, *e.g.*, 8 Edw. 7, c. cxv., s. 6.

(*k*) 9 Edw. 7, c. 34, ss. 12, 15, 16, 17, 18.

Clauses authorising the local authority to take electricity in bulk from and supply electricity in bulk to local authorities and companies supplying electricity in adjoining districts, and to supply electricity for the purposes of railways, tramways etc. — Supply in bulk.

A clause authorising the local authority to allow discount for prompt payment for electricity supplied by them. — Discount.

Clauses empowering the local authority to provide and sell or let for hire, but not to manufacture, electrical apparatus, such as lamps, meters etc. — Sale etc. of fittings.

A clause restricting the charges that may be made by the local authority against the rates for energy used by the local authority for street lighting and other purposes (*l*). — Charges for public lamps.

Clauses authorising the acquisition of land for generating stations (*m*) or the provision and maintenance of generating stations on lands of the local authority (*n*), and in some cases declaring the provisions of the schedule to the Electric Lighting (Clauses) Act, 1899 (*o*), or their equivalent, which preserve the liability of the undertakers for nuisance, inapplicable to such stations (*p*). — Acquisition of land; generating stations.

Clauses authorising the use of generating stations and works constituting part of a tramway undertaking of the local authority for the purposes of their electric undertaking (*q*). — Use of tramway works.

A clause concerning the attachment of lamp brackets to buildings (*r*). — Lamp brackets.

A clause empowering the local authority to accept transfers of undertakings of local authorities of adjoining districts (*s*). — Transfer of undertakings.

A clause for the periodic revision of charges with a view to balancing expenditure and revenue (*t*). — Balancing of revenue and expenditure.

Part VIII.—Undertakings not specially Authorised.

SECT. 1.—*Private Undertakings and Installations.*

1276. Persons and bodies not enjoying special authority in that behalf are, as has been stated, prohibited, subject to some exceptions, from commencing to supply or distribute electricity within the area of supply of undertakers duly authorised to supply electricity (*a*). — Competition by unauthorised undertakers with authorised undertakers.

In other respects private electrical installations and undertakings, — Bulk of legislation inapplicable to private concerns.

(*l*) See, *e.g.*, 7 Edw. 7, c. lxxvii., containing (in Part IV.) clauses on all the above-mentioned subjects.
(*m*) See, *e.g.*, 2 Edw. 7, c. ccxxxii., ss. 42, 59.
(*n*) See, *e.g.*, 2 Edw. 7. c. ccxli., s. 4; 9 Edw. 7, c. clix., s. 85.
(*o*) 62 & 63 Vict. c. 19, schedule, s. 81.
(*p*) See, *e.g.*, 5 Edw. 7, c. i., s. 107; 5 Edw. 7, c. lxiii., s. 21.
(*q*) See, *e.g.*, 8 Edw. 7, c. xx., s. 35.
(*r*) See, *e.g.*, 3 Edw. 7, c. clxxxi, s. 7.
(*s*) See, *e.g.*, 5 Edw. 7, c. xliii., s. 76; 9 Edw. 7, c. lxxxix., s. 56.
(*t*) See, *e.g.*, 4 Edw. 7, c. ccxl., s. 65.
(*a*) Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 23.

SECT. 1. Private Undertakings and Installations.

that is to say, electrical installations and undertakings established and carried on by persons and bodies not enjoying statutory powers for the purpose, are little, if at all, directly affected by the legislation hitherto discussed (*b*).

Power of Board of Trade to regulate works of private concerns.

Where, however, an electric line or other work, other than an electric line or work of the Postmaster-General, or used or to be used solely for telegraphic purposes, has been (*c*) laid down or erected in, over, along, across, or under any street, for the purpose of supplying electricity, or has been (*c*) laid down or erected in any other position for such purpose in such a manner as not to be entirely enclosed within any building or buildings, or where any electric line or work so laid down or erected may be used for such purpose otherwise than under and subject to the provisions of a licence, Order, or special Act (*d*), the Board of Trade may, if they think fit (except in the case of an electric line or work laid down or erected by any body or person for the supply of electricity generated on one part of premises in their occupation to another part of those premises), by due notice (*e*) to the body or person owning or using or entitled to use the electric line or work, require that it shall be continued and used only in accordance with such conditions and subject to such regulations for the protection of the public safety and of the electric lines and works of the Postmaster-General, and of other electric lines and works lawfully placed in any position and used for telegraphic communication, as the Board prescribe; and in case of non-compliance with those regulations the Board may require the removal of the line or work (*f*).

The Board of Trade have model regulations for application to private undertakings under the above powers.

(*b*) See pp. 560 *et seq.*, *ante*, where the application of the Electric Lighting Acts, and of the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), is discussed. Though, except where the prohibition in the Electric Lighting Act, 1909 (9 Edw. 7, c. 34), s. 23 (see p. 563, *ante*), applies, there is nothing to render such an undertaking unlawful, the practical difficulties in the way of carrying on an undertaking embracing the supply of electricity to any considerable body of consumers without statutory powers, particularly in regard to interference with roads for the purpose of the provision and maintenance of distributing plant, are great. And such undertakings are not common. As to interference with roads without statutory powers in that behalf, see title HIGHWAYS, STREETS, AND BRIDGES. As to defraying the cost of an electric lighting installation on leasehold premises out of capital money, under the Settled Land Act, 1890 (53 & 54 Vict. c. 69), s. 13 (ii.), see *Re Freake's Settlement*, *Kinnaird* v. *Freake*, [1902] 1 Ch. 97; *Re Clarke's Settlement*, [1902] 2 Ch. 327, and title REAL PROPERTY AND CHATTELS REAL.

(*c*) The words in the Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), s. 4, are "may have been," indicating that the section applies alike to existing and future works.

(*d*) The words "otherwise than under and subject to the provisions of a licence" etc. are introduced in the section (*ibid.*), as in the text, so that it is not clear grammatically whether they are to be read with the whole of the preceding language, or with the immediately proceding words only. But the section is clearly intended to meet the case of apparatus not subject to regulation under a licence, Order, or special Act only; and it is only in the case of such apparatus that recourse to it is required

(*e*) The service of notices under the section is specially provided for (*ibid.*, s. 4 (4)).

(*f*) *Ibid.*, s. 4 (1), (6).

The Postmaster-General has powers somewhat similar to those of the Board of Trade above mentioned in the case of an electric line or work used for the supply of electricity so as injuriously to affect any telegraphic line of the Postmaster-General or the telegraphic communication through any such line; but these powers do not apply to the supply of electricity through any line or work laid down or erected under and subject to the provisions of a licence, Order or special Act, or used in accordance with conditions or regulations prescribed by the Board of Trade under their above-mentioned powers, nor to an electric line or work used or to be used solely for telegraphic purposes (*g*).

Power of Postmaster-General to regulate private concerns.

Compliance with regulations issued by the Board of Trade or Postmaster-General under the powers above mentioned is secured by penalties; and in case of non-compliance a court of summary jurisdiction are empowered to direct and authorise the removal of the line or work upon such terms as they think fit (*h*).

Non-compliance with regulations.

For the purposes of the enactments above referred to, "telegraphic line" has the meaning assigned to it by the Telegraph Act, 1878 (*i*), and the definitions in the Electric Lighting Act, 1882 (*k*), apply, except that "street" includes any square, court, alley, highway, lane, road, thoroughfare, or public passage or place whatever (*l*).

Definitions: "telegraphic line"; 'street."

1277. Where Part II. of the Public Health Acts Amendment Act, 1890 (*m*), is in force, the local authority have powers for making bye-laws, with the sanction of the Board of Trade, with regard to posts, wires, tubes, and other apparatus placed above, over, along, or across streets for the purpose of any telegraph, telephone, lighting, railway signalling, or other purpose. Apparatus of railway and canal companies fulfilling certain conditions is not subject to the bye-laws; and the Board of Trade may temporarily exempt other apparatus from their operation; but a court of summary jurisdiction are given powers for dealing with apparatus so exempted in cases of danger (*n*).

Bye-laws as to wire etc. in streets.

Works of undertakers under the Electric Lighting Acts, to which the provisions of those Acts apply, are wholly exempt from the operation of Part II. of the Act, as also is apparatus of the Postmaster-General (*o*).

Exemption of works of authorised undertakers.

1278. In London the employment of overhead wires over and near streets is regulated by the London Overhead Wires Act,

Overhead wires in London.

(*g*) Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), s. 4 (2), (6).
(*h*) *Ibid.*, s. 4 (3).
(*i*) 41 & 42 Vict. c. 76. See title TELEGRAPHS AND TELEPHONES.
(*k*) As to these definitions, see pp. 547—549, *ante*.
(*l*) Electric Lighting Act, 1888 (51 & 52 Vict. c. 12), s. 4 (5). The special definition of "street" was necessary in consequence of the restriction of the definition in the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 32, to streets within the area of supply of undertakers.
(*m*) 53 & 54 Vict. c. 59, ss. 13—15. As to these sections, which were enacted mainly with a view to the control of telephone wires, see title TELEGRAPHS AND TELEPHONES. And as to the manner in which the sections can be adopted or otherwise put in force in particular localities, see title LOCAL GOVERNMENT.
(*n*) *Ibid.*, ss. 13, 14.
(*o*) *Ibid.*, s. 15 (1).

SECT. 1. Private Undertakings and Installations.

1891 (*p*), and the bye-laws of the London County Council made under that Act (*q*).

The Act defines the "wires" to which it applies as including any wire, conductor, or cable and any support or attachment thereto, any part of which is placed over any street or part of a street, or placed or intended to be placed, on or over any building or land, and situate at any point within fifty feet from any street, subject, however, to an exception for wires of railway companies (*r*).

Exemption of wires of authorised undertakers and certain private wires.

The Act and the bye-laws under it do not apply to undertakers acting under special Act, Provisional Order, or licence under the Electric Lighting Acts, or to their wires (*s*), nor to any wire placed by any person for his private use over land belonging to him or in his occupation which does not extend over any street and is so constructed or placed that neither the wire nor any support thereof or attachment thereto would be liable to fall into any public street (*t*). And there are other exceptions from its operation.

SECT. 2.—*Electric Lighting of Streets by Local Authorities under General Powers.*

Street lighting powers under Public Health Acts.

1279. An urban authority, or a rural authority invested with urban powers in that behalf (*a*) may contract for the supply of gas or other means of lighting the streets, markets, and public buildings in their district, and may provide lamps, lamp-posts, and other materials for lighting the same (*b*). And these powers clearly extend to lighting the streets etc. by electricity as well as by other means.

The authority are, by virtue of these powers, entitled as against the owner of the soil to erect lamp-posts in streets, and can justify such obstruction to the traffic as the lamp-posts must cause (*c*). But they are not entitled as against the owner to fix brackets on a building abutting on a street (*d*), and possibly not to fix a lamp-post in a street in such a way as to interfere with the exercise of

(*p*) 54 & 55 Vict. c. lxxvii. As to the Act, which, like the enactments mentioned in the preceding paragraph, was passed primarily with a view to the control of telephone wires, see further title TELEGRAPHS AND TELEPHONES.

(*q*) The bye-laws at present in force (1910) were approved by the Board of Trade, 29th July, 1892.

(*r*) *Ibid.*, s. 2.

(*s*) *Ibid.*, s. 17.

(*t*) *Ibid.*, s. 18.

(*a*) As to investing a rural authority with urban powers, see title LOCAL GOVERNMENT.

(*b*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 161. See further title HIGHWAYS, STREETS, AND BRIDGES. The provisions in the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 3 (3), and the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), schedule, ss. 24, 26, 29, 30, 34, or their equivalent, with regard to the supply of electricity to local authorities for public lamps are doubtless enacted with reference to the powers of local authorities under s. 161 of the Act of 1875, and the corresponding powers of metropolitan local authorities.

(*c*) See *Chaplin (W. H.) & Co., Ltd.* v. *Westminster Corporation*, [1901] 2 Ch. 329.

(*d*) See *Meek* v. *Langdon* (1862), 37 L. T. Jo. 181. Many local authorities have special statutory powers for affixing lamp-brackets to buildings.

the private right of access to the street to which an adjoining owner is entitled as distinguished from the public right of passage (*e*). As against the owner of the soil they have the right to place posts in and electric lighting wires along or across streets vested in them (*f*).

The powers of urban authorities, and of rural authorities invested with the necessary urban powers (*g*), to cause works to be executed in streets not repairable by the inhabitants at large at the cost of the frontagers include power to require the provision of means of lighting the street (*h*), and doubtless extend to means for lighting the street by electricity as well as otherwise.

Street lighting powers under Lighting and Watching Act

1280. A parish council or other authority, acting in a rural parish or part of a rural parish in the execution of the provisions of the Lighting and Watching Act, 1833 (*i*), with regard to lighting, have power to cause lamp-irons or lamp-posts to be put up or fixed upon or against the walls or palisadoes of houses, tenements, buildings, or inclosures, or to be put up and erected otherwise within the roads, streets, and places within the area for which they act; to attach lamps to such lamp-posts and lamp-irons for lighting such roads, streets and places; and to cause the same to be lighted with gas, oil, or otherwise (*k*). And there seems to be no reason why the powers of the Act should not extend to lighting streets etc. with electricity.

Street lighting powers of metropolitan borough councils.

1281. Metropolitan borough councils have powers for street lighting (*l*) resembling those of urban authorities under the Public

(*e*) See *Chaplin (W. H.) & Co., Ltd.* v. *Westminster Corporation*, [1901] 2 Ch. 329; but the case was decided under the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 130, and that Act contains nothing corresponding with the general compensation provisions in the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 308.

(*f*) *Fareham Local Board and Fareham Electric Light Co.* v. *Smith* (1891), 7 T. L. R. 443; *Baird* v. *Tunbridge Wells Corporation*, [1894] 2 Q. B. 867, *per* LINDLEY, L.J., at p. 874; *Escott* v. *Newport Corporation*, [1904] 2 K. B. 369, *per* KENNEDY, J., at p. 375. See further title HIGHWAYS, STREETS, AND BRIDGES.

(*g*) As to investing a rural authority with urban powers, see title LOCAL GOVERNMENT

(*h*) Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150; Private Street Works Act, 1892 (55 & 56 Vict. c. 57). As to this legislation, see title HIGHWAYS, STREETS, AND BRIDGES.

(*i*) 3 & 4 Will 4, c. 90. As to the Act generally and the extensive amendments in it effected by the Local Government Act, 1894 (56 & 57 Vict. c. 73) see title HIGHWAYS, STREETS, AND BRIDGES.

(*k*) Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 45. The scope of the powers of street lighting conferred by the Act is not clear. There are, however, provisions in ss. 46 and 47 (enacted by way of proviso on s. 45) with regard to the laying of gas pipes under the powers of the Act, which indicate that some power in that behalf is implied in s. 45, and there seems no good reason why that implied power should not extend to the laying of electric mains in the street, at any rate underground. The provisions of the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), as to the supply of electricity to local authorities for public lamps do not extend to a supply to an authority acting under the Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90). But there is no reason, apparently, why undertakers carrying on a statutory electric undertaking should not supply electricity to such an authority.

(*l*) Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 130. See title HIGHWAYS, STREETS, AND BRIDGES.

SECT. 2. Electric Lighting of Streets etc.

Health Acts, but their powers to cause streets to be paved etc. at the cost of the frontagers in certain cases (*m*) do not extend to imposing on the frontagers the cost of providing means of lighting.

Part IX.—Miscellaneous.

Electricity in factories, workshops etc.

1282. Elaborate regulations (*n*) made by the Home Secretary under s. 79 of the Factory and Workshop Act, 1901 (*o*), with the object of minimising danger, apply to the generation, transportation, distribution, and use of electricity in factories and workshops within the meaning of that Act (other than domestic factories and domestic workshops (*p*)), or in any place to which the provisions of s. 79 are applied by that Act (*q*). The observance of the regulations is secured by penalties (*r*).

Electrical stations subject to factory legislation.

"Electrical stations"—*i.e.*, any premises, or that part of any premises, in which electrical energy is generated or transformed for the purpose of supply by way of trade, or for the lighting of any street, public place, or public building (*s*), or of any hotel or of any railway, mine, or other industrial undertaking—are "non-textile factories" within the meaning of the Act (*t*).

Regulations as to electricity in London theatres etc.

1283. The electric lighting and heating arrangements of theatres and certain houses, rooms, and other places of public resort in the administrative county of London are subject to an elaborate series of regulations made by the London County Council (*a*).

Cinematograph exhibitions.

1284. The use of electric light in connection with cinematograph exhibitions is controlled by regulations made by the Home Secretary (*b*) under the Cinematograph Act, 1909 (*c*).

(*m*) As to which, see title HIGHWAYS, STREETS, AND BRIDGES.

(*n*) Contained in Orders dated December 23rd, 1908, Stat. R. & O., 1908, Factory and Workshop, p. 340, and July 25th, 1909, Stat. R. & O., 1909, Factory and Workshop.

(*o*) 1 Edw. 7, c. 22, s. 79. As to this Act generally, see title FACTORIES AND SHOPS.

(*p*) Regulations of 1908, Exemptions, No. 7.

(*q*) *I.e.*, shortly, docks, premises where building operations involving the use of machinery worked by steam, water, or other mechanical power are being carried on, and certain railway sidings used in connection with factories and workshops (see Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), ss. 104—106; and title FACTORIES AND SHOPS).

(*r*) *Ibid.*, s. 85; and see title FACTORIES AND SHOPS.

(*s*) A workhouse is a public building for this purpose (*Mile End Union* v. *Hoare*, [1903] 2 K. B. 483).

(*t*) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), Sched. VI. (20).

(*a*) The regulations, which are dated March 25th, 1902, appear to be made under the Metropolis Management and Building Acts Amendment Act, 1878 (41 & 42 Vict. c. 32), s. 12, and to extend to all premises as to which the London County Council have power to make regulations under that section. See further title THEATRES ETC.

(*b*) Dated 18th February, 1910 (Stat. R. & O. 1910, No. 189), repealing regulations dated December 20th, 1909 (Stat. R. & O., 1909, Cinematograph), with a saving as to licences granted thereunder. See title THEATRES ETC.

(*c*) 9 Edw. 7, c. 30.

Release of gas undertakers from obligations.

1285. The Board of Trade have powers enabling them, where a supply of electricity is authorised in any case by licence, order, or special Act, to relieve gas undertakers in certain circumstances from obligations to supply gas in any specified part of that area (*d*).

Annual report of Board of Trade.

1286. The Board of Trade report their proceedings under the Electric Lighting Acts annually (*e*).

(*d*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 29.
(*e*) Under *ibid.*, s. 30.

ELEGIT.

See EXECUTION.

ELEMENTARY EDUCATION.

See EDUCATION.

EMBEZZLEMENT.

See CRIMINAL LAW AND PROCEDURE.

EMBLEMENTS.

See LANDLORD AND TENANT; REAL PROPERTY AND CHATTELS REAL.

EMBRACERY.

See CRIMINAL LAW AND PROCEDURE.

EMIGRANT AND EMIGRATION.

See SHIPPING AND NAVIGATION.

EMIGRANT RUNNER.

See SHIPPING AND NAVIGATION.

EMPLOYER'S LIABILITY.

See MASTER AND SERVANT.

ENCROACHMENT.

See COMMONS AND RIGHTS OF COMMON; HIGHWAYS, STREETS, AND BRIDGES.

ENFRANCHISEMENT.

See COPYHOLDS.

ENGINEERS.

See BUILDING CONTRACTS; WORK AND LABOUR.

ENGLISH INFORMATION.

See CROWN PRACTICE.

ENGRAVINGS.

See COPYRIGHT.

ENTAIL.

See DESCENT AND DISTRIBUTION; REAL PROPERTY AND CHATTELS REAL.

ENTRY ON LAND.

See COMPULSORY PURCHASE OF LAND ETC.

EPISCOPAL VISITATION.

See ECCLESIASTICAL LAW.

EQUITABLE ASSIGNMENTS.

See CHOSES IN ACTION; MORTGAGE.

EQUITABLE DEFENCES.

See EQUITY.

EQUITABLE EXECUTION.

See EXECUTION.

END OF VOL. XII.

INDEX.

EDUCATION, 1—130
accidents to scholars, liability for, 33
accommodation in public elementary schools, 10, 24, 25
accounts of district board, audit of, 88
local education authority, audit of, 52
advowsons of universities, 93
age of child, false representation as to, by parent, liability for, 64
proof of, in legal proceedings, 66
agent of employer, liability of, for taking child into employment, 64
ages within which parent must have child educated, 55
agriculture, exemptions from school attendance for children employed in, 61, 62
Agriculture and Fisheries, jurisdiction of Board of, 15
aid grant, 11, 12, 50
annual grant, 49
annuity for certified teachers, 128, 129
appeal against provision of new public elementary school, 26
scheme relating to mixed charities, 104
under Endowed Schools Acts, 110, 111
apportionment of mixed charities, 104, 105
apprenticeship of children in reformatory or industrial schools, 77
workhouses, 81, 82
appropriation of land for purposes of higher education, 24. *See also* land.
money, annual, in aid of education, 6
area of various councils, measurement of, 17
art, science and, acquisition of schools for, 24
education in, 6
attendance at public elementary school, duty to enforce, 25, 56
order, 57
audit of accounts of district board, 88
local education authority, 52
begging, treatment of children found, 71
blind child, duty of parent of, to cause to attend school, 60
children, grants to schools for, by Board of Education, 12
meaning of, 41
period of compulsory education of, 55
provision for, by local education authority, 41
special elementary education for, 24, 25. *See also* defective children.
Board of Agriculture and Fisheries, jurisdiction of, 15
Education, 8—14 etc.
action by, on default by local education authority, 12
aid grant, 12, 50
appeal to, against provision of new public elementary school, 26
"Code" of, 10, 11
constitution, 8, 9
consultative committee, 8, 9
education charities, jurisdiction over, 13, 99, 115
elementary education, 10—12
fee grant, 11, 12
general functions, 9, 10
grants to special schools, 12
higher education, 10
inquiry by and report to, and by, 14
inspection of schools by, 10, 12
jurisdiction of, over charities, 99, 100, 115
President and officers, 8
Provisional Order by, for compulsory acquisition of land, 27
small population grant by, 11

EDUCATION—*continued.*
boarding institution, school in, may be public elementary, 29
borough council, borrowing powers of, 51
and urban district councils, appointment of managers by, 34
borrowing powers of borough council, 51
certain universities, 93
county council, 50
district board, 88
local authority for reformatory and industrial schools, 79
education authority, 50, 51
Bristol University, 97
building grants, parliamentary, 120
bursaries, provision of, in respect of elementary education, 18
bye-laws for area of local education authority, 13
limitations and conditions of, 61
parents to cause the child to attend school in accordance with, 55
purpose of, 59, 60
respecting attendance of children at school, 58—62
Cambridge University, 91, 92, 93
government of, 92, 95
canal boats, residence and instruction of children in, 67
catechism not to be taught in council school, 23, 34
cathedral schools exempt from Endowed Schools Acts, 104
central authorities, 8—15
authority for poor law education, 81
reformatory or industrial schools, 72, 73
Board of Education, 8—14. *See* Board of Education.
other central authorities, 14, 15
Welsh Board, 114
certificate as to attendance of child at school, duty of occupier of factory to obtain, 69
education, effect of, where child employed in factory, 69
necessity for, in certain cases of employment of children, 62, 63
false, as to child's age, penalty for, 64
for teachers, 128, 129
of inspector that child has reached certain standard, effect of, 61
principal teacher of public elementary school as evidence, 66
schools for defective children, conditions for grant of, 44
reformatory or industrial school must obtain, 74
to parent of children in canal boats, 67
certified efficient school, meaning of, 57
school, child of different religious denomination not sent to, 90
inspection of, 85
meaning of, and power of guardians in respect of, 84
charges in public elementary schools, 30, 31
charities, educational. *See* educational charities.
Charity Commissioners, application by, of certain non-educational charities to education, 115
exercise of powers of, by Board of Education, 13
schools, schoolmasters as officers of, 125, 126
charter for university, application for, 92
"child," meaning of, in Factory and Workshop Act, 1901...67
churchwardens, minister and, right of, to hold land for educational purposes, 119, 120
City of London not local education authority, 53
clothing, schoolmaster has no implied authority to supply, 123
"Code" of Board of Education, 10, 11
colleges of universities, 92
combination agreements, 46
Committee of Council for Education, 9
committees, joint education, 45
common law, education at, 4, 122
compensation to officers of local authorities, jurisdiction over, 15
compulsory acquisition of land for schoolhouses, 27. *See* land.
attendance at school, 56
conferences between local education authorities, 46
conscience clause for day and evening schools, 23
scholars in scheme under Endowed Schools Acts, 106, 107
in certain schools under Lord Cranworth's Act, 116, 117

EDUCATION—*continued.*
Consolidated Fund, grants in aid from, 48, 49
Consultative Committee to Board of Education, 8, 9
contract between parent and schoolmaster 122, 123
contribution to maintenance of child, 44, 78
towards education, 81—84
control of secular instruction, 30, 35, 36
conversion of non-educational to educational charities, 115, 116
conveyance of children to school or college, 21, 61, 64
co-ordination of all forms of education, duty of council to promote, 22
corporal punishment by schoolmaster, 124
corporation, district board as, 86
right of, to hold land for educational purposes, 119
universities as, 90, 91
council, county. *See* county council.
registration, 127
councils, combined action by, 45, 46
with powers concurrent with local education authority, 17, 23
county borough council, borrowing powers of, 51
functions and duties of, regarding reformatory schools, 73, 74
boroughs, grants by, to poor law authorities, 88
council, appointment of managers by, 34
contributions by, to councils with concurrent powers 46
functions and duties of, regarding reformatory schools, 73, 74
grants by, to poor law authorities, 88
loans, 50, 51
raising of rate by, 47, 48
Cowper-Temple clause, 34
criminal surroundings, treatment of children found in, 71
damages, measure of, on removal of pupil without notice, 123
day industrial schools, 79—81
court's power to send child to, 58
of religious observance, bye-law must not require attendance of child at school on, 61
deaf child, duty of parent of, to cause to attend school, 60
children, grants to school for, by Board of Education, 12
meaning of, 41
period of compulsory education of, 55
provision for, 41
special elementary education for, 24, 25
default by local education authority, procedure on, 12
defective children, 40—45
blind and deaf children, 42
certificates of schools for, condition for grant of, by Board of Education 44, 45
contribution by parent to expense of local authority, 44
duty of parent of, to cause to attend school, 61
epileptic children, 43
examination of, 42, 43
in general, 40, 41
meaning of, 41
mode of ascertaining, 42
period of compulsory education of, 55
religious instruction, 43
special elementary education for, 24
degrees, power of university to confer, 91
delegation of management of school, 46
parents' authority to schoolmaster, 123
power to inflict corporal punishment by schoolmaster, 124
powers by local education authority to education committee, 22, 23
denominational teaching in "provided" school, 23, 24
deserted children, guardians may send to certified school, 84
destitute children, treatment of, 71
detention of pupil by schoolmaster, 124
order for reformatory or industrial school, 72
diocesan inspection, 38
disablement allowance for certified teachers, 128, 129
dismissal of schoolmaster or teacher, 37, 38, 106, 125, 126
district school, inspection of, 87

EDUCATION—*continued.*
Durham University, 93, 95
duties and liabilities of parents and employers, 54, 70. *See* parents etc.; employers etc.
duties of guardians, 82—85
agreements between, 82
blind, deaf and dumb children, as regards, 83
certified schools, powers in respect of, 84, 85
contributions towards public elementary and other schools etc. 82, 83
out-relief, 83
provision of education in workhouses, 82
use of district schools, 83
dwelling-house, charge for teacher's, 37
education authority. *See* local education authority.
committee, establishment, constitution, and powers of, 19, 20
failure of local education authority to make scheme for, 13
legal proceedings for non-attendance at school to be by direction of, 65
Education Department, exercise of powers of, by Board of Education, 13
educational charities, 99—117
Board of Education, powers of, in case of certain charities excluded from Endowed Schools Acts, 115
under Endowed Schools Acts, 99—111. *See* Endowed Schools Acts, etc.
conscience clause in certain schools under Lord Cranworth's Act, 116, 117
conversion of non-educational charities into, 115, 116
grammar schools, 116
local education authority as trustees for, 21
reform of, 5
Welsh intermediate education, 111—114. *See* Welsh intermediate education.
"educational endowment," meaning of, 101, 102
efficient school recognised, 70
elementary education, distinction between higher and, 17, 18
duty of parent to cause child to receive efficient, 56—58
grants in aid of, 49
in workhouses, 82
jurisdiction of Board of Education over, 10—12
local education authorities for, 17
powers of local education authority in respect of, 18, 19. *See also* public elementary schools.
public. *See* public elementary schools.
emigration of children in reformatory or industrial schools, 77
employers, default of, and agents and parents, in case of, 64, 65
duties and liabilities of, 54, 62—65 etc.
enforcement of, 64
in general, 54, 62—64
legal proceedings against, 65, 66
meaning of, in Factory and Workshop Act, 1901...67
towards children in canal boats, 67
factories and workshops, 67—70
Endowed Schools Acts, powers of Board of Education under, 99—111
apportionment of mixed charities, 104, 105
charities to which Acts apply, 101—104
procedure and appeals, 109—111
provisions in schemes, 105—108
alteration of, 109
relating to religious matters, 106—108
endowments, benefits of, to be extended to girls, under Endowed Schools Acts, 105
educational, meaning of, 101
mixed, 104, 105
of voluntary schools, application of, in certain cases, 28, 40, 53
out of rates for Welsh intermediate education, 112
to go in relief of rates in certain cases, 48
enlargement of existing public elementary school, 26
epileptic children, duty of parent of, to cause to attend school, 61
grants to school for, by Board of Education, 12
meaning of, 41
order requiring, to be sent to certified school, 56, 57
period of compulsory education of, 55

EDUCATION—*continued.*
epileptic children, provision of education for, 42
special elementary education for, 24, 25
evidence, on legal proceedings against parents and employers, 66
examination of defective children, and parents' duties in respect thereof, 42. *See also* inspection.
excuse, reasonable. *See* reasonable excuse.
exemption from school attendance, 61, 63
expense of local education authority in case of defective children, parents' contribution to, 44
travelling, provision of, for children to school in certain cases, 21
expulsion of child from school, 122, 124
schoolmaster's right to fees on, 123
factories, education of children employed in, 54, 67—70
false representation as to child's age, liability for, 64
fee grant by Board of Education, 11, 12
charges in schools receiving, 30, 31
meaning of, 50
fees in public elementary schools, 30, 31
voluntary schools, 39
foundation managers, 35
scholars at certain public schools, 98
funds at disposal of local education authorities, 47, 51
girls, benefit of endowments to be extended to, under Endowed Schools Acts, 105
glebe, grants out of, for educational purposes, 119
grammar schools, reform of, 116
grant, fee, by Board of Education, 11, 12
grants in aid from central authorities, 48—50
councils, 88
of building etc. 120
day industrial schools, 80, 81
education generally, 6, 9, 10
industrial schools, 77
poor law authorities, 88
reformatory and industrial schools, 73
schools for defective children, 12, 50
Universities, 94
Welsh intermediate education, 113
grouping of schools, 34, 39
guardian of child, included in "parent," 55
guardians, 82—85. *See* duties of guardians.
habeas corpus, parent's right of, against schoolmaster, 124
higher education, distinction between elementary and, 17, 18
duties of local education authorities in respect of, 22—24
grants in aid of, 48, 49, 50
jurisdiction of Board of Education over, 10
power to supply, 16, 17
rating for purposes of, 23
in London, 53
history of law, 4, 5
holy orders, master in endowed school not disqualified by not being in, 107, 108
Home Office, jurisdiction of, 15
Home Secretary, grants in aid of industrial schools by, 49
hostel, religious instruction in, 23
immoral surroundings, treatment of children found in, 71
in loco parentis, schoolmaster stands, 123
industrial institutions, acquisition of land by, 121
schools, contributions of guardians towards, 83
court's power to send child to, 58
grants in aid of, 49
supervision of, 15. *See also* reformatory and industrial schools.
infant candidate for teaching profession, contract by, 127
information, publication of, by Board of Education, as to efficient local schools, 12
injunction against appointment or dismissal of schoolmaster, 125, 126
inquiry by Board of Education, before acquisition of land, 27
mode of, 14
inspection of "certified" school, 85
district school, 87
public elementary school, 12, 30

EDUCATION—*continued.*
inspection of reformatory and industrial school, 72
secondary school, 23
voluntary school, 38
inspector, effect of certificate of, that child has reached certain standard, 61
joint accounts of education committees etc., audit of, 52
education committees, 45
in Welsh intermediate education, 113, 114
maintenance of schools, 46
officers of separate local authorities, 46
land, acquisition, appropriation, or disposal of, for educational purposes, 117—121
by district board, 86
managers of voluntary school, 40
technical and industrial institutions, 121
universities, 92
for higher education, 24
public elementary schools, 26, 27
reformatory and industrial schools, 74, 79
grants under School Sites Acts, 118—121
Leeds University, 96, 97
legal proceedings against parents and employers, 65, 66
Liverpool University, 96
loans. *See* borrowing powers.
local education authorities, 15—54
as trustees for educational charity, 21
audit of accounts of, 52
Board of Education, duty of authority to consult in certain cases, 10
borrowing powers, 50, 51
combined action by councils, 45, 46
constitution of, 17
councils with concurrent powers, 23
creation of, 16
day industrial schools, powers relating to, 80
default by, 12
defective children, 40—45. *See* defective children.
delegation of powers by, 20
duties in respect of higher education, 22—24
education committees, establishment, constitution, and powers of, 19, 20
elementary education, powers in respect of, 19
provision of, 24—40. *See* elementary education.
funds at disposal of, 47, 51
grants to, 48—50
London, special provisions as to, 52—54
main powers and duties of, 17
provision of schools by, 24
rating by, 23, 47, 48
reformatory and industrial schools, functions and duties of, relating to, 73, 74
religious instruction in schools maintained by, 23, 24
relinquishment of powers, 19
returns from, 14
Local Government Board as central authority for poor law education, 81
jurisdiction of, in general, 14
over district board, 86, 87
loco parentis, schoolmaster stands *in*, 123
London County Council as local education authority, 52, 53
special provisions as to, 52—54
University, 95, 96
maintenance of public elementary schools, 29
managers, general powers and duties of, 37—39
joint appointment of, 46
of day industrial school, powers of, 80
public elementary school, 33, 34
in case of voluntary school, 34, 35. *See also* voluntary school.
in London, 53
reformatory and industrial schools, 73
liability of, 39, 74
mandamus on default by local education authority, 12
manor, grant of land by lord of, for educational purposes, 118

EDUCATION—*continued.*
marine schools may be maintained, 29
marriage, loss of disablement allowance through, 129
woman not disqualified by, for education committee, 20
masters of certain public schools, appointment of, 98. *See also* teachers.
meals, provision of, for public elementary schools, 18, 32, 33
measure of damages on removal of pupil without notice, 123
medical inspection in public elementary schools, and medical attendance, 18, 31, 32
meeting of county council, voting at, in respect of elementary education, 19
metropolis, poor law authorities in, 88, 89
metropolitan borough council, not local education authority, 53
military service, employment in, of children etc. in reformatory or industrial schools, 77
minister and churchwardens, power of, to hold land for educational purposes, 119
minor local authority, meaning and powers of, 34
in London, 53
misconduct, dismissal of pupil for, 124
loss of pension through, 129
mixed charities or endowments, apportionment of, 104, 105
Mortmain Acts. *See* land.
naval service, employment in, of children etc. in reformatory or industrial schools, 77
necessity for public elementary school, 29
meaning of necessity, 26
new public elementary school, provision of, and appeal against, 25, 26
non-county boroughs, powers of, for purposes of higher education, 23
non-provided school, 25
notice before removal of pupil, 123
officers, joint, of separate local education authorities, 46
of local education authority, appointment of, 34
public elementary schools, appointment of, 20
order, school attendance, 56, 57
non-compliance with, 57, 58
ordinary, jurisdiction of, to be abolished in schemes under Endowed Schools Acts, 106
orphan, guardians may send to certified school, 84
out-relief by guardians, 83
Oxford University, government of, 92, 94
parents, canal boats, in case of children in, 67
contract between schoolmaster and, 122, 123
contribution to expenses of day industrial school, 81
defective children, 44
medical treatment, 32
reformatory and industrial schools, 78
meals of children in public elementary schools, 33
defective children, in case of, 55
delegation of authority to schoolmaster, 123
duties and liabilities of, 54—62
efficient elementary education of children, 56—58
enforcement of duties, 56, 58
factories and workshops, in case of children in, 67—70
meaning of parent for purposes of, 67
in general, 54—56
legal proceedings against, 65, 66
out-relief to parents, 83
payment of school fees of, by guardians, 84
school attendance of children in accordance with bye-laws, 58—62
limitations and conditions of bye-laws, 61
purposes of bye-laws, 59, 60
parliamentary grants, 49
pension scheme for certified teachers, 127—130
play centres, provision of, for public elementary schools, 18, 32
playground included in "schoolhouse," 37
poor law authorities, powers and duties of, 81—90
grants to, by councils, 88
guardians, 82—85. *See* duties of guardians.
in general, 81
metropolis, rules specially applicable to, 88, 89

EDUCATION—*continued.*
poor law authorities, powers and duties of—*continued*
religious instruction in workhouses, 89, 90
school board districts, 85—88. *See* school board districts.
poor law education, 5
relief, defrayment of, 83
population, grants for small, 49
of borough or urban district, 17
powers of local education authorities, 15—54
President of Board of Education, 8
Privy Council, appeal to, in case of certain schemes, 104, 110
proceedings, legal, against parents and employers, 65, 66
produce of a rate, 23
production of child, order for, in certain cases, 65, 66
proficiency certificate, 68
proof of age of child in legal proceedings, 66
" provided " school, denominational teaching in, 24
provision of schools, 24—37
provisional order for compulsory acquisition of land for schoolhouses, 27
public elementary schools, 24—40
contributions towards, by guardians, 82
duty to provide school accommodation, 10, 25, 26
fees and charges, 30
grants in aid of, 49
inspection, 12, 30, 38
local education authorities, power of, in respect of, 18, 19. *See* local education authorities.
maintenance, 17, 29
managers, 34
in London, 53
of voluntary schools, 34, 35
medical inspection and medical attendance, 31, 32
provision of meals, 32, 33
schoolhouses, 26—28, 37
recreation, provision for, 32
regulation, 30
religious instruction, 29, 36, 113, 411
teachers and officers, 20, 36, 37, 38
voluntary schools. *See* voluntary schools.
public schools, 97—99
exclusion of certain from Endowed Schools Acts, 102
publication of notice as to new school, 26
school attendance bye-laws, 59
punishment by schoolmaster, 124
pupil teachers, appointment of, 38
grants in aid of institutions for instructing, 10
rates, certain endowments to go in relief of, 48
endowments out of, for Welsh intermediate education, 112
liability of, towards education, 23, 47, 48
in London, 53
liability of, towards reformatory schools, 78, 79
meals in public elementary schools partly from, 32, 81
reasonable excuse for non-compliance with school attendance order, 57
parents' breach of bye-law as to children's school attendance, 60
neglect to provide elementary instruction, 56
recognised efficient schools, 70
recreation, provision for, in public elementary schools, 32
reformatory and industrial schools, 15, 70—81
apprenticeship and emigration, 77
central authority, 72, 73
class of children received, 71
closing of, 75
conduct of, 74
control of children, 75, 76
day industrial schools, 79—81
definitions, 70, 71
exchange from, 76
expenses, defrayment of, 77—79

EDUCATION—*continued.*
reformatory and industrial schools—*continued*
local authorities and managers, 73, 74
mode and period of detention, 72
parents' contribution, 78
placing inmates out on licence, 76, 77
religious instruction, 75
supervision of ex-inmate, after detention, 77
schools, 15
transfer, 76
refractory children, treatment of, 71, 72
Registration Council, 127
registration of teachers, 127
regulations as to conduct of public elementary school to be exhibited, 30
religious instruction, bye-law must not prevent withdrawal of child from, 61
in endowed school, 106—108
public elementary school, 34, 36
reformatory and industrial schools, 75
schemes under Welsh Intermediate Education Act, 113
school aided or maintained by council, 23
voluntary schools, 36, 38, 39
workhouses, 89, 90
no grant for, 11
of defective children, 43
observance, bye-law must not require attendance of child at school on day of, 61
tests at universities, 93, 94
worship in endowed schools, 106—108
no disqualification of masters etc. by reason of, in endowed school, 107, 108
removal of pupil, notice before, 123
repair of voluntary school, 37
report on inquiry by Board of Education, 14
to Parliament by Board of Education, 14
representation, false, as to child's age, liability for, 64
representative managers, 35
returns required from local education authorities, 14
Robson's Act, 59
room in school house, fair wear and tear of, 37
salaries of teachers, responsibility for, 36
scheme, pension, for certified teachers, 127—130
schemes for application of endowment money in London, 53, 54
conversion of non-educational to educational charities, 115, 116
grammar schools, 116
education committee, 19, 20, 45
schemes under Endowed Schools Act, 100, 104—111
alteration of, 100
appeals, 110, 111
object of, 100
procedure, 109
provisions relating to religious matters, 106—108
scholars, foundation, at certain public schools, 98
scholarship examination, liability of schoolmaster on, 123, 124
scholarships, provision of, in respect of elementary education, 18
school attendance committees, 16
order, 56, 57
non-compliance with, 57, 58
board, creation of, 15, 16
constitution, 86
corporation, may sue as, 86
expenses of, 87, 88
formation, 85, 86
powers and duties, 86, 87
canteen committees, 32, 33
district boards, 85
fees, payment of, by guardians in certain cases, 84
furniture, use of, and damage to, 37, 38
houses, provision of, 26—28, 37
recognised efficient, meaning of, 70

EDUCATION—*continued.*
School Sites Acts, grants of lands under 118—120
schools, elementary. *See* elementary education ; public elementary schools.
for defective children, aequisition etc. of, 42, 43
certificate for, 44, 45
grants in aid of, 50. *See* also defective children.
industrial. *See* reformatory and industrial schools.
inspection of, by Board of Education, 10
joint maintenance of, 46
public, 97—99
exclusion of certain, from Endowed Schools Acts, 102
reformatory. *See* reformatory and industrial schools.
secondary, expenses of inspection of, 23
voluntary. *See* voluntary school.
schoolmasters and teachers, 122—130
appointment etc. of, in public elementary school, 20, 38
voluntary school, 36, 37
as officers of charities, 125—127
contract of, with parents, 122, 123
dismissal of, 106, 125, 126
in voluntary school, 36, 37 .
expulsion from school by, 122, 124
schoolmaster's right to fees on, 123
extent of authority of, 123
infant, 127
in general, 122
in loco parentis, 123
notice before removal of pupil, 123
pension scheme for certified, 127—130
punishment by, 124
registration, 127
scholarship examination, liability on, 123, 124
science and art, aequisition of schools for, 24
education in, 6
search of building etc., power of justice to order, in certain cases, 65
secondary schools, expenses of inspection of, 23
Secretary of State as central authority for reformatory and industrial schools, 72, 73
jurisdiction in granting certificates etc., 74, 75
secular instruction, control of, 36
Sheffield University, 97
sickness of child as excuse for default of parent, 56, 60
"small population grant," 11, 49
special grant by Board of Education in certain districts, 11
Sunday school, attendance at etc., not to be required as condition of education, 23, 29
superannuation allowance for certified teachers, 128, 129
officers of reformatory and industrial schools, 75
of elementary school teachers, jurisdiction over, 15
officers of district boards, 87
teachers, 122—130. *See* schoolmasters and teachers.
technical institutions, aequisition of land by, 121
time table in public elementary school, 30
training colleges, grants in aid of, 10
ships, provision of, 89
transfer of voluntary school to local education authority, 28
travelling expenses to school, provision of, in certain cases, 21
Treasury, grants in aid by, 48
jurisdiction of, 15
trustees for educational charity, local education authority as, 21
universities, 90—97
advowsons, 93
application for charter for, 92
colleges of, 92
constitution, 91
degrees conferred by, 91
land, aequisition etc. of, 92, 93
parliamentary representatives, 94, 95, 96
religious tests, 93, 94
visitors, 92

EDUCATION—*continued.*
University, Birmingham, 96
Bristol, 97
Cambridge, 95
Durham, 95
Leeds, 96, 97
Liverpool, 96
meaning of, 90
London, 95, 96
Oxford, 94
Sheffield, 97
Victoria, of Manchester, 96
Wales, 96
urban district council, borrowing powers of, 51
powers of, for purposes of higher education, 23
when a local education authority, 17
use of rooms in voluntary school out of school hours, 37
vacation classes and schools, provision of, for public elementary schools, 18, 32
vehicles, provision of, 21
vested interests, certain, to be preserved in scheme under Endowed Schools Acts, 105, 106
Victoria University of Manchester, 96
" visitors " of Oxford and Cambridge, 92
rights of, in scheme under Endowed Schools Acts, 106
voluntary schools, 34—40
acquisition of land for, 40
creation and meaning of, 16
endowment of, 40
application of, in London, 53
fees in, 39
inspection of, 38
maintenance and control, 16, 35—38
managers, appointment of, 34, 35
general powers and duties of, 37—39
religious instruction in, 36, 38
teachers, appointment and dismissal of, 36—38
transfer of, to local education authority, 28
voting at county council meeting in respect of elementary education, 19
Wales, scheme for education committee in, 20
University, 96
wandering, treatment of children found, 71
water rate, liability for, 36
wear and tear, damage due to, 37
Welsh Central Board for intermediate education, functions of, 114
intermediate education, 111—114
endowments and public funds, 112, 113
nature and object, 111, 112
procedure, 113, 114
religious instruction in schemes, 113
schools, grants in aid of, 48
" whisky money " meaning and application of, 49
in case of Welsh intermediate education, 113
women, inclusion of, on education committees, 19
workhouse, education etc. of children in, 81, 82
religious instruction in, 89, 90
schools, 82
workshops, education of children employed in, 54, 67—70
youthful offenders, apprenticeship and emigration of, 77
commission of, to reformatory, 72

ELECTIONS, 131—540
absence from employment, employer may grant, for voting, 289
person nominated candidate in, 265
account of expenses of clerk of county council, 246, 247
overseers, 239, 240
returning officer, 333, 334
town clerk, 247, 248
sales of copies of register, 246

ELECTIONS—*continued.*
action against election commissioners, 472
address, election, illegal payments for exhibiting, 294
adjournment of nomination of candidate, 277
poll, 307
advertisement hoardings, illegal payments for, 294
affidavits in support of withdrawal of petition, 432, 433
age for qualification to be on register, 139
agency, proof of, at election petition, 446, 447
agent, election, appointment of, 266—268
disqualification of, for voting, 145
fine against, 532
none in municipal elections, 341
payment of election expenses to be through, 297, 298
return by, as to candidate's expenses, 335—337
for party to election petition, privilege of, 467, 468
of candidate for chairmanship of urban district council, 375, 376
urban district councillorship, 364
agents other than election agents at parliamentary election, 268—273
canvassers, 272, 273
unpaid workers, 269—271
parliamentary, 410
polling. *See* polling agent.
agreement, illegal, for withdrawal of petition, 434
alderman as returning officer in municipal election, 340
aldermen, county, election of, 361
in municipal corporations, election of, 354, 355
of City of London, election of, 394, 395
preparation of list of persons qualified to be, 205
alien, disqualifications of, 140, 183
alms, disqualifications by receipt of, 144, 145, 181, 183
alphabetical order for burgess roll, 246
names in register, 242
amendment of municipal election petition, 494
parliamentary election petition, 413. *See also* petitions.
Appeal, Court of, appeal from revising barrister to, 256
appeal from commissioner for municipal election petitions, 489
interlocutory proceedings in municipal elections, 506
order as to inspection of ballot papers etc. in municipal election, 511
report of election commissioners, 469, 470
appeal from revising barrister, 248—257
altering register after, 257
consolidation of appeals, 251—253
objections to, 253
costs of, 255
Court of Appeal, to, 256
fact, none on question of, 248
hearing of, 253, 254
mandamus, 254, 255
notice of judgment of High Court on, 256, 257
to respondent, 251
revising barrister, 249
preliminary objection, 254
remission of case on, 254
respondent, persons liable to be made, 250
special case stated in municipal election petition, 512
on hearing of election petition, 460
statement of case, 249, 250
appointment of commissioner for municipal elections, 487, 488
election commissioners, 463
judges, 408
revising barrister, 217—219
apportionment of rent etc. for purposes of qualification for county franchise, 151
assignee of lease, qualification of, for county franchise, 154, 155
assistants at parliamentary election, position of, 268—273
canvassers, 272, 273
unpaid workers, 269—271
associations, political, agency of, 272, 273
asylum, effect of confinement in, on household franchise, 164

ELECTIONS—*continued.*
attestation annexed to lodger's claim to vote, 207, 208
Attorney-General, reports to be laid before, 462, 469, 519
auditors, elective, in municipal corporation, election of, 355, 356
authorised excuses and exceptions for corrupt or illegal practices, 398—408
cost of application for, 476, 477, 522
in municipal elections, 407, 408, 508
parliamentary elections, 398—407
illegal payments, expenses, or employment, 399—404
irregularities as to return and declaration of expenses, 405—407
payments after time limited, 404
of disputed claim, or claim sent to candidate, 404, 405
treating, undue influence, or illegal practice, 398, 399
object and effect of, 398
avoidance of election. *See* void election.
baiting horses, payments for, for conveyance to poll, 294
ballot-boxes, construction of, 316
opening of, 326
provision of, at election of rural district councillors, 379, 380
urban district councillors, 372
in general, 311
sealing and custody of, 320
chairman of urban district council cannot be elected by, 375
criminal offences relating to, 534, 535, 538
" ballot paper account," 320
ballot paper, wrongful application for, 292, 293
papers, criminal offences connected with, 530, 531
disposal of, 329—331, 350, 351
formal requirements of, 316
inspection of, 428, 511
omission of withdrawn candidate's name from, 312, 313
rejected, 328, 329
inspection of, 330
sealing of, after counting, 329
during interval of counting, 326, 327
spoilt, 319, 320
striking off of votes improperly recorded on, 458
poll for urban district councillors by, 368
secrecy of, 318, 534
voting by, in City of London, 394
bands of music, illegal payment for, at election, 301
banners, illegal payment for, at election, 301, 347
barrister at hearing of election petition, 442, 443
corrupt practice by, 471, 485, 525
barristers, revising. *See* revising barristers. *See also* counsel.
bedesmen, qualification of, for county franchise, 149
beginning of candidature for Parliament, 265, 266
election, time of, 263, 264
bill, election, failure to publish name of printer and publisher on, 296, 297
illegal payments for exhibiting, 294
municipal election, name of printer etc. to be on, 348
blind voters, 317
board of guardians, election of, 192, 389—392
in metropolis, 397
election of chairman of, 393
booths, polling, use of, 310
borough councils, metropolitan, elections in, 395—397
elections, no sub-agents in, 267
occupation franchise in, 156—161. *See* occupation franchise.
owners of land in, not thereby qualified for county franchise, 152, 154, 155
payment by, of costs of municipal election petition, 522, 523
register for, 139
reserved rights of franchise in, 178—180
bribery as corrupt practice, 281—293. *See* corrupt practices etc.
misdemeanour, 529
avoidance of election through, 279
municipal election, in case of, 345
disqualification of parish councillor by, 387

ELECTIONS—*continued.*
bribery, effect of conviction of, on right to vote, 141
evidence of, 448
no relief to candidate in case of, 399
punishment for, in early days, 135
striking off votes for, 455, 456
Bristol, freeholders and burgage tenants in, 179, 180
burgage tenants, franchise of, 179, 180
burgess roll in force on day of municipal election, 344
making of, 246
burgesses, register of, 244—248
bye-election for board of guardians, 390
county councillor, 357
urban district councillor, 362
parliamentary, 257
Cambridge, qualification for burgess of borough of, 188, 189
University of, election writ relating to, 258
franchise of, 182
notice of election for, 262, 263
candidate, commencement of candidature of, in parliamentary election, 265, 266
corruptly inducing withdrawal of, 301, 347
death of, 307, 350
disqualification of, 483—486, 524, 525
notice of, 305, 306
expenses of. *See* expenses etc.
false statements as to character or conduct of, 298—300, 540
withdrawal of 296, 347
liability of, under "parliamentary common law of agency," 269—272
nomination of, 273—278. *See* nomination of candidate.
withdrawal of, 276, 344
parish councillorship, 385, 388
urban district councillorship, 366
canvass, certain persons forbidden to, 538
canvassers, 272, 273
payment of, 303
carriage, illegal hiring of, at election, 303, 348
case, statement of, by revising barrister, 249, 250. *See also* special case.
casting vote at election of aldermen, 355
chairman of urban district council, 375
mayor, 353
urban district councillor, 373
of returning officer, 328
casual vacancies in parish council, 382
urban district council, 374. *See also* bye-election.
certificate for expenses of overseers, 240
town clerk, 247
of chairman as to candidate for parish councillorship, 387, 388
indemnity in municipal election petition, 514
parliamentary election petition, 467
judges on hearing of election petition, 460, 461
naturalisation, production of, on hearing of election petition, 458
relieving officers' expenses, revising barrister to make, 241
cestui que trust, qualification of, for county franchise, 150
chairman of board of guardians, election of, 393
county council, election of, 359, 360
parish council, election of, 389
rural district council, election of, 382
urban district council, election of, 375, 376
chambers, judge at, election proceedings before, 423, 428, 435, 436
character of candidate, false statements as to, 298—300, 540
charity, colourable, as bribery, 287
Christmas Day, candidate may not be nominated on, 277
exclusion of, in calculations of time, 262, 414, 427
City of London, criminal offences in, relating to ballot, 535
elections in, 394, 395
municipals electors in, 190
reserved rights in, 181
secondary of, duty of, 202

ELECTIONS—*continued.*
claim before revising barrister, opposition to, 229, 230
proof in support of objection, 230—232
for franchise, proof of, 228, 229
claims of voters, notice of, 205—209
clergy as county aldermen, 361
qualifications of, for county franchise, 149, 150
clerk, election, illegal payment for, 300
employment of, at parliamentary election, 268, 269
in municipal election, 341
of county council, account, and payment of expenses of, 246, 247
costs against, on appeal from revising barrister, 255
delivery by, of documents to revising barrister, 219, 221
precepts to overseers, 195
register, 244
to, of lists by revising barrister, 237, 238
misfeasance by, 537
notice to, of appointment of revising barrister, 219
judgment on appeal from revising barrister, 256
preparation of register by, 244, 245
revising barrister may name as respondent to appeal, 250
supplemental list of voters by, 243
Crown, entries by, in return book, 333
misfeasance by, 537
no return to, in case of municipal election, 350
notice to, of hearing of election petition, 439
packets to be sent to, by returning officer, 329
penal action against, 539
return to, of elected member of Parliament, 331, 332
parish council, duties of, 382, 383
rural district council as returning officer, 377
urban district council as returning officer, 362
cockades, illegal payment for, at election, 301, 347
colourable charity as bribery, 287, 288
commencement of candidature for Parliament, 265, 266
municipal candidature, 339
parliamentary election, 263, 264
commission for examination of witness, 430, 431, 511, 512
commissioner for municipal election petitions, 486—491
accommodation for, and attendance on, 489
adjournment of trial by, 489
appeal from, 489
appointment, 487, 488
criminal jurisdiction, 537
death etc. of, 488
inquiries by, 488, 489
qualifications, 487
remuneration, 490, 491
reservation of question of law, 489
staff, 489, 490
title of court, 491
commissioners, election, appointment of, 138
committee room, illegal payment for, 301, 346
use of school, licensed premises etc., as, 304
committee rooms, lawful number of, 295
unlawful use of, in municipal elections, 348, 349
committees, parliamentary, former judicial proceedings by, 135, 136
common councilmen of City of London, election of, 394, 395
"common hall" elections in, 190, 394, 395
common informer, penal action by, 537
Commons, House of, action by, on report of judges on election petition, 463
member of, may not be commissioner for municipal election petition, 487
compartments of polling stations, 310, 315, 372
conduct and management of election, distinct from commencement of, 264
expenses coming within, 297, 298
of candidate, false statements as to, 298—300, 540

ELECTIONS—*continued.*
conduct of election. *See* parliamentary election etc.; municipal election etc.
connivance of candidate, effect of absence of, 398, 399, 407
consent, person nominated candidate without, 265
consolidation of appeals from revising barrister, 251—253
constable, certificate enabling, to vote at special station, 311
contempt of court at election petitions, 488, 514
contents of petition, 414, 415
contract, illegal, relating to municipal election, 345, 346
to procure return of member of Parliament, 333
conveyance of electors, illegal hiring for, 303
payment for, 293, 294, 345, 346
conveyances, fraudulent to create votes, 153, 537
co-owners, qualification of, for county franchise, 152
copies of register, account of sales of, 246
duties of town clerk etc. respecting, 244
copyholders, qualification of, for county franchise, 153, 154
corporate office, meaning of, 492
corrections in list, revising barrister to read aloud, 237
corrupt and illegal practices list, omissions from, 216, 217
removal of name from, 209
to be appended to register, 242
practices at parliamentary election, 281—293
bribery, 281—289
instances of, 288, 289
proof of, 286—288
false statutory statement, 293
personation, 292, 293
treating, 289—291
undue influence, 291, 292
authorised excuses for, 398—408. *See* authorised excuses.
avoidance of municipal election by, 345
disqualification of candidate by, 483—486
effect of conviction for, on right to vote, 141
inquiry into, 463. *See* election commissioners.
prosecution for, before election court, 535—537
report as to, 461, 462, 518, 519
corruption at elections, 278—281. *See also* corrupt practices.
costs of appeal from revising barrister, 250, 255
where appeals consolidated, 252, 253
municipal election petition, 520—523
security for, 494, 495, 498
parliamentary election petition, 472—483
application for relief in case of illegal practice, costs of, 476, 477
of High Court principles, 477
circumstances to be regarded, 472
Director of Public Prosecutions, costs of, 475
disagreement of judges as to, 474
discretion of court, 477
election commissioners, costs of, 481—483
general rule, 472
grounds for special order, 472—474
non-payment of, 480
office fees, 479
order for payment by county, borough, or individual, 474, 475
payment out of money deposited, 479, 480
returning officer, costs of, 476
security for, 419—422
taxation and recovery, 478
witnesses, costs of, 477, 478
prosecution for personation, 527
revising barrister's jurisdiction over, 238, 239. *See also* expenses.
councillors, election of, 339—352
agents, workers and assistants. 341, 342
bands of music, illegal payments for, 347
corrupt practices, 345
county council, in case of, 356—359
disturbance at, 349
expenses, return and declaration as to, 351, 352

ELECTIONS—*continued.*
councillors, election of—*continued.*
false statement as to withdrawal, 347
freedom of, 345
illegal employment, 348
hiring, 348, 349
payments, 347
practices, 345, 346, 349
joint candidates, 346
limit of expenses, 346, 347
municipal borough, in case of, 182–190. *See* municipal borough etc.
nomination, 342—344
notice of, 340
placards and posters, 348
poll, 349—351
procuring improper votes, 347
returning officer, 340
time for, 339, 340
unauthorised payments, 349
unlawful committee rooms, 348, 349
wards, where borough has, 339
preparation of list of persons qualified to be, 205
counsel at hearing of election petition, 442, 443
cannot be heard at revising barrister's court, 222. *See also* barrister.
counterfoils, inspection of, 428, 429, 511
counties, notice in, to persons desiring to be placed on register, 199
occupation franchise in, 161, 162
ownership franchise for, 145—155. *See* ownership franchise etc.
reserved rights of franchise in, 177
"counting agents," 326
counting votes at election of board of guardians, 392
rural district councillors, 381
urban district councillors, 373, 374
in municipal election, 351
parliamentary election, 326—329
county aldermen, election of, 361
council, clerk of. *See* clerk of county council.
election of chairman of, 359, 360
councillors of, 190, 191, 356—359
elections, petition in case of, 499
court, taxation of returning officer's expenses by, 334
electors, register of, 244—248
register for, 139
Court of Appeal, appeal from revising barrister to, 256
revising barrister, 220—223
coverture, disqualification for municipal franchise by, 183
no disqualification for parochial franchise by, 191
criminal offences, 525—537
jurisdiction of election court, 535—537
felonies, 525—528
indictable misdemeanours, 528—532
offences summarily triable, 532—535
criminating question, witness at election petition must answer, 450, 466, 467
Crown, Clerk of. *See* Clerk of Crown.
employment in service of, franchise by virtue of occupation in, 173
office, issue of writs by, 257
transmission of case to, on appeal from revising barrister, 250
person holding office under, cannot be revising barrister, 218, 219
customary tenants, qualification of, for county franchise, 153, 154
"dead," addition of, by overseers to name on list in certain cases, 202, 204
death, effect of sentence of, on right to vote, 141
of candidate before poll, 307
chairman of urban district council, 375
commissioner for municipal election petitions, 488
election agent or sub-agent, 267
commissioner, 464
member of Parliament, 257
election petition after, 418
municipal candidate, 350

ELECTIONS—*continued.*
death of person giving notice of objection to voter, effect of, 216
petitioner in municipal election petition, 508
or respondent in parliamentary election petition, 435
respondent to municipal election petition, 496, 509
deaths, return of, to overseers of parish, 198
deceased persons, expunging of names of, by revising barrister, 232
declaration as to expenses, authorised excuses for irregularity in, 405—407
by municipal candidate, 351, 352
parliamentary candidate, 336—338
failure to make, 298
false, 529
by appellant or respondent in consolidated appeal from revising barrister, 252
person nominated candidate in his absence, 265
of election of parish councillor, 385, 387
rural district councillor, 381, 382
urban district councillor, 374, 375
misdescription, revising barrister may act on, 226
parliamentary candidate, 264—266
residence in lodger's claim to vote, 207
result of municipal election, 351
parliamentary election, 331
secrecy of ballot, 318
denization, letters of, effect of, on right to vote, 140
deposit, security by, for costs of municipal election petition, 494
parliamentary election petition, 422
deputy, appointment of, by sheriff as returning officer, 258, 259
chairman of London County Council, 397
of returning officer, criminal offence by, 530
returning officer for election of county councillors, 357
rural district councillors, 377, 381
urban district councillors, 363, 373
revising barristers, 219
description, inaccurate, in list of voters, effect of, 200, 206
insufficient, expunging of name by revising barrister for, 233
of candidate in nomination paper, 274, 275
directions to voters, 315
Director of Public Prosecutions, action by, on report of Election Commissioners, 471
costs of, 475, 521
prosecution by, for personation, 527, 528
rights and duties of, at election petition, 442—444, 514, 515
on withdrawal of election petition, 433, 434
disagreement of judges, effect of, on costs of petition, 472—474
discovery in election petition, no order for, 430
disfranchised persons, publication of list of, 196
disfranchisement of borough or district, 138
disputed claim, authorised excuse for payment of, 404
disqualification of municipal candidate, 524, 525
parliamentary candidate, 483—486
dissenting minister, qualification of, for county franchise, 150
dissolution of Parliament before hearing of election petition, effect of, 422
while election petition pending, 435, 436
district council, urban. *See* urban district council.
councils, election of councillors of, 191, 192
disturbance at municipal election, 349
public meeting during election, 300
divided borough, returning officer for, 259
"division registers" of county, 245
documents, mode of publication of, 199, 200
production of, at election petition, 452
double entries on list, revising barrister's duties with regard to, 234, 235
method of selection, 235, 236
returns of members of Parliament, 332, 333, 538, 539
duress, corrupt practice by employment of, 292
dwelling-houses, duties of overseers with respect to, 196

ELECTIONS—*continued.*
dwelling-houses, qualification of occupiers of, 163 *et seq*
election agent. *See* agent.
commissioners, 463—472
action against, 472
appointment, 138, 463, 464
costs of, 481—483
death etc. of one of, 464
meetings, 464, 465
oath by, 464
perjury before, 467, 468, 471
persons eligible, 464
privilege of solicitors and agents, 467, 468
report by, 468—471
effect on persons reported, 471
hearing of, and appeal by, person reported, 469, 470
laying of, before Parliament, 470
scope of inquiry, 465, 466
staff of, 464
witnesses, expenses of, 471
summoning of, questions to, and liability of, 466—468
court, criminal jurisdiction of, 535—537
for municipal election petitions, 486
judges, appointment of, 408
petitions. *See* petitions.
elective auditors in municipal corporation, election of, 355, 356
electoral divisions for election of county councillors, 358
eleemosynary occupation, effect of, on household franchise, 166
employees in municipal election, 341
employer, grant of leave of absence by, for voting, 289
employment, colourable, as bribery, 287
illegal. *See* illegal etc.
occupation by virtue of, franchise by, 172—174
entertainment, provision of, may be corrupt practice, 289, 290
equitable interest, qualification for county franchise by, 147
evidence at municipal election petition, 516, 517
trial of offences relating to ballot papers etc., 531
documentary, at election petition, 452
duplicate of notice of objection to voter as, 215
election petition need not state, 415
of agency and corrupt practice, 446, 447
bribery, 286—288
on commission in election petition, 430, 431
production of, before revising barrister, 222
recriminatory, at election petition, 453, 454
rewards for, 448
subsequent statement of agent not receivable as, against candidate, 273.
See also proof.
examination of witness on commission, 430, 431, 511, 512
exceptions for corrupt or illegal practices, 398—408. *See* authorised excuses etc.
excessive expenditure of candidate as illegal practice, 295, 296
excuses and exceptions, authorised, for corrupt etc. practices, 398—408. *See* authorised excuses etc.
execution for costs of election petition, 478
Exeter, freeholders and burgage tenants in, 179, 180
expenses, false declaration of, as criminal offence, 529
illegal, authorised excuses for, 399—404
legal, at election, examples of, 302
of candidate for chairmanship of urban district council, 375, 376
mayoralty, 353
office of aldermen, 355
chairman of county council, 360
county alderman, 361
elective auditor, 356
clerk of county council, account and payment of, 246, 247
town clerk, account and payment of, 247, 248
conveying electors by sea, 295
creating polling districts etc., defrayment of, 309
"election court," 411

ELECTIONS—*continued.*
expenses of election in City of London, 395
of urban district councillors, 363, 364, 373
rural district councillors, 380
municipal election, 346, 347, 350
overseers, account of, 240, 241
relieving officers, certification of, by revising barristers, 241
returning officer, 277, 333—335
not included in maximum allowed, 295
witnesses before election commissioners, 471
personal, of candidate, 295, 301
not included in maximum allowed, 295
publication of summary of, 338
return of, failure to make, 298, 336
inspection of, 338
irregularity in, excuses for, 405—407
necessity for, in municipal elections, 351, 352
parliamentary elections, 335—337
time for payment of, 298
travelling, payment of, as bribery, 288, 289
See also costs.
fact, decision of revising barrister on question of, 248
false answer by voter to certain questions a criminal offence, 530, 532
declaration by candidate or agent, 338, 345, 529
return of member of Parliament, 332
statement as to character or conduct of candidate, 298—300
withdrawal of candidate, 296, 347
injunction against, 540
statutory statement as corrupt practice, 293
fee simple, qualification for county franchise by, 146
tail, qualification for county franchise by, 146
fees not to be given or taken in relation to election writ, 260, 261
felonies, 525—528
felons, right of, to vote, 141, 184
females, disqualification of, for parliamentary vote, 140
qualification of, for municipal franchise, 183
fines by revising barrister, 239
for certain offences, 532, 535
application of, 539
flags, illegal payment for, at election, 301, 347
flats, household franchise by occupation of, 168
forfeiture of recognisances in municipal election petition, 521, 522
forgery of nomination paper, 532
form, non-compliance with, by returning officer, 261
franchise for election of board of guardians, 192
councillors of county council, 190, 191
municipal borough, 182—190. *See* municipal borough etc.
parish and district councils, 191, 192
elections in universities, 192, 193
municipal elections, 182—193
elections included in municipal elections, 182
parliamentary elections, 139—182
aliens, 140
alms, persons in receipt of, 144, 145
corruption, persons convicted of, 141, 142
felons, 141
females, 140
household franchise, 163—174. *See* household franchise.
lodger franchise, 174—177
lunatics and idiots, 140
medical relief, out of poor rate, persons receiving, 142
offenders against election laws, 141
old-age pensioners, 143
ownership franchise for counties, 145—155. *See* ownership franchise etc.
parents of children receiving public aid, 143
parochial relief, persons receiving, 143, 144
paupers, 142

ELECTIONS—*continued.*
franchise for parliamentary elections—*continued.*
peers, 140
personal qualifications, 139
property qualifications, 145—181. *See* ownership; occupation; household; lodger etc.
registration, 139
reserved rights in boroughs, 178—180
City of London, 181
counties, 177
returning officers and election agents, 145
universities, 181, 182
fraud of agent, avoidance of election by, 293
fraudulent conveyances to create votes, 153, 537
freedom of election, 278—281, 345. *See also* corrupt practices; illegal practices.
freehold, qualification for county franchise by, 145, 146
in case of clergy, 149, 150
freeholders in certain towns, special franchise of, 179, 180
not of inheritance, reserved rights of, in counties, 177
Freeman's Roll, 179
freemen, franchise of, 178, 179
in City of London, 181
list of, 202, 243
non-resident, revising barrister's duty in respect of, 237
notice of claims by, 208
reserved rights of, no application to municipal franchise, 189
frivolous and vexatious proceedings before revising barrister, 238, 239
Good Friday, candidate may not be nominated on, 277
exclusion of, in calculations of time, 262, 414, 427
guardians, board of, election of, 192, 389—392, 397
chairman of, 393
head-money, report by election commissioners as to payment by way of, 468, 469
hearing of municipal election petition, 512—518
contempt of court, 514
Director of Public Prosecutions, attendance and duties of, 514, 515
evidence, 516, 517
formal objection, 515
jurisdiction of election court, 515
notice of, 513
order of trial, 512
postponements and adjournments, 513
procedure and practice, 516, 517
recriminatory case, 516, 517
reservation of question of law, 517
scope of inquiry, 517
scrutiny, 517
shorthand writer, 514
time, place, and mode of, 513, 515, 516
witnesses, 513, 514
hearing of parliamentary election petition, 437—460
adjournment, 439
after expiration of rota, 439
change of venue, 438
conclusiveness of register, 455
contempt of court, 440
counsel, 442, 443
Director of Public Prosecutions, rights and duties of, 442, 443
evidence, documents of, 452, 454
of agency and corrupt practices, 446, 447
recriminatory, 453
rewards for, 448
formal objection, 445
illness etc. of judge, 440
limits of parties' duties at, 443, 444
order of trial, 437
procedure, 445
production of documents and telegrams, 452
questions of law and special case, 459, 460
recount, 458, 459

ELECTIONS—*continued.*
hearing of parliamentary election petition—*continued.*
scrutiny, 454, 455
shorthand writers, 440
striking off votes, 455—458
time and place, 438
notice of, 438, 439
witnesses, examination etc. of, 440, 441, 448, 449
questions admissible, 449, 450
respondent as witness, 451, 452
hiring illegal. *See* illegal etc.
hoardings, advertisement, illegal payments for, 294
horses, illegal hiring of, at election, 303, 348
stabling or baiting for conveyance to poll, 294
hospitals, qualification of inmates of, for county franchise, 148, 149
House of Commons, action by, on report of judges on election petition, 463
member of, may not be commissioner for municipal election petition, 487
household franchise, 163—174
dwelling-house, qualification of occupier of, 163
inhabitancy, 164, 165
interest in qualifying property, 166
joint occupation, 167
lodgers, 168, 169
proof of tenancy agreement, 166, 167
rating, necessity of, for, 170—172
service franchise, 172—174
rating in case of, 174
successive occupation, 165
identity of candidate in nomination paper, 274
voter must be sufficiently described to establish, 233
idiot, disqualification of, 140
illegal agreement for withdrawal of petition, 434
payment, employment or hiring as criminal offence, 534
at municipal elections, 345—349
parliamentary elections, 300—304
authorised excuses for, 399—404
evidence of, 448
illegal practice by, 300
striking off vote for, 455—457
practices, 293—300
as criminal offence, 530
at election of urban district councillors, 368
authorised excuses for, 398—408. *See* authorised excuses.
avoidance of municipal election by, 345—349
by illegal payment, employment or hiring, 300
disqualification of parish councillors by, 387
disturbance of public meeting, 300
effect of conviction for, on right to vote, 141
excessive expenditure, 295, 296
failure to make return of expenses, 298
false statement as to character or conduct, 288—300
withdrawal of candidate, 296
inducing prohibited person to vote, 296
payments for advertisement hoardings, 294
conveyance to poll, 293, 294
excessive committee rooms, 294, 295
not within prescribed time, 298
otherwise than through election agent, 297, 298
printing of bill etc., without name of printer and publisher, 296, 297
prosecution for, before election court, 535—537
publication of list of persons guilty of, 196
report as to, 461, 462, 518, 519
summary conviction for, 533, 534
illiterate voters, 317
imprisonment, effect of, on household franchise, 164
inadvertence, illegal expenses or payments through, 399, 400
irregularity in return of expenses through, 405
in case of municipal election 407

ELECTIONS—*continued.*
incapable voters, 317
incapacitated persons, expunging of name of, by revising barrister, 233
incriminating question, witness at election petition must answer, 450
before election commissioners must answer, 466, 467
incumbent, qualification of, for county franchise, 149
indemnity, certificate of, in municipal election petition, 514
parliamentary election petition, 467
indictable misdemeanours, 528—532
indictment, form of, for corrupt practice, 529
personation, 528
influence undue. *See* undue influence.
inhabitant occupier, distinction between occupier and, 168, 169
qualification of, 163 *et seq.*
injunctions, 539, 540
inquiries by commissioner for municipal election petition, 488, 489
overseers before preparation of lists of voters, 196—199
into corrupt practices, 463. *See* election commissioners.
inspection of assessment to taxes by overseers, 198
ballot papers and other documents, 351, 428, 429, 511
rejected ballot papers etc., 330
occupiers' list of voters, 203
overseers' account of expenses of registration duties, 240
ownership list of voters, 202
return of candidate's expenses etc., 338, 351, 352
returns of deaths made to overseers of parish, 198
interlocutory proceedings in municipal election petition, 505—512
appeal from, 506
countermanding trial, 511
death of petitioner, 508
respondent, 509
dismissal of petition, 508
examination of witness on commission, 511, 512
filing copies of orders and particulars, 512
hearing of, 505
inspection of ballot papers or counterfoils, 511
jurisdiction of High Court, 506
notice of, 506
intention not to oppose petition, 508
to admit and produce, 511
particulars, 506, 507
recount, 512
recriminatory case, particulars of, 507
relief against corrupt and illegal practices, 503
report on withdrawal, 510
statement of case to High Court, 512
substitution of petitioner, 508—510
withdrawal of petition, 509, 510
interlocutory proceedings in parliamentary election petition, 422—437
by whom tried, 422, 423
copies of orders, 430
countermanding notice of trial, 436
death etc. of petitioner or respondent, 435
discovery, no jurisdiction to order, 430
dismissal of petition, 436
evidence on commission, 430, 431
in recriminatory case, 427
inspection of ballot papers and other documents, 428, 429
list of votes objected to, delivery of, 426
particulars, 423, 424
amendment of, 424, 425
recounts, 427, 428
service of notices, 430
statement of petition as special case, 436
appeal, 437
withdrawal of petition, 431—435
affidavits in support of, 432, 433
illegal agreements for, 434, 435

ELECTIONS—*continued.*
interlocutory proceedings in parliamentary election petition—*continued.*
withdrawal of petition—*continued.*
report on, 435
substitution of petitioner, 433, 434
interrogatories, no order for, in election petition, 430
interruption at nomination of candidate, 277
of poll, 307
intimidation, avoidance of election by, 280, 345
intoxicating liquor, use of places for sale of, as polling places, 371
premises licensed for, etc. as committee room, 304, 348
Ireland, special scale of expenditure allowed at election in, 296
irregularity as to return of expenses, authorised excuses for, 405—407
Jewish voters, 317
joint municipal candidates, limit of expenses of, 346
occupation, effect of, on county franchise, 162
household franchise, 167
lodger franchise, 176
municipal franchise, 189
occupation franchise in boroughs, 157
judge at chambers, election proceedings before, 423
judges, appointment of revising barristers by, 218
election, appointment of, 408
jurisdiction of, 410, 411
jury, person charged with corrupt practice may be tried by, 535
justice of peace guilty of corrupt practice, 471, 485, 525
metropolitan, canvassing by, 538
offences triable before, 533, 534
land, meaning of, for purposes of occupation franchise in boroughs, 157, 158
law, appeal from revising barrister on question of, 248—257. *See* appeal from etc.
reservation of question of, at election petition, 459, 489 517
leaseholders, qualification of, for county franchise, 154, 155
legal estate, bare, no qualification for county franchise by, 147
expenses at election, examples of, 302
letters of denization, effect of, on right to vote, 140
licensed premises, bribery or treating on, 471, 485, 525
use of, as committee room, 304, 348
polling place, 371
life estate, qualification for county franchise by, 146, 147
facts constituting life estate, 148
liquor. *See* intoxicating liquor.
lists, destruction of, 537
mode of publication of, 199, 200
of disfranchised persons, publication of, 196
parliamentary election petitions, 437
persons who have not paid rates, preparation of, 197, 198
voters, delivery of, by overseers, 217
objection to, 209—217
delivery of lists, 217
form of notice, 210, 211, 214
grounds of objection, 213
lists of persons objected to etc. to be made, 216, 217
objection to omission from corrupt etc. practices list, 216
persons to whom notice given, 210—212
revival of, after objector's death, 216
right to object, 209, 210
service of, 214, 215
withdrawal of, 216
printing of, 241—244
registration of. *See* register of voters; preparation of lists etc.; revising barrister.
supplemental, 243
to be delivered to revising barrister, 221
transmission of, by revising barrister, 237, 238
liverymen, election of, in common hall, 394, 395
franchise of, 181
notice of claims by, 208
preparation of list of, 202
local government election, prohibited person voting at, 535

ELECTIONS—*continued.*
lodger, distinction between inhabitant occupier and, 168, 169
franchise, 174—177, 189
notice of claim for, 207, 208, 228, 229
list, new, preparation of, 204
old, preparation of, 204
not a tenant for purpose of household franchise, 165
London, administrative county of, register in, 245
City of, municipal electors in, 190
petition in case of elections for, 499, 500
reserved rights in, 181
county councillors, election of, 397
criminal offences in, relating to ballot, 535. *See also* metropolis.
University of, election writ relating to, 258
franchise of, 182
notice of election for, 263
Lord Chief Justice, appointment of revising barristers by, 218
Lord Mayor of London, election of, 394
lunatic, disqualification of, to vote, 140, 164
mandamus against revising barrister, 254, 255
to enforce municipal election, 339
will not lie in certain cases where petition available, 504
marriage, disqualification for municipal franchise by, 183
no disqualification for parochial franchise by, 191
master in Crown Office, transmission of case to, on appeal from revising barrister, 250
of Supreme Court, appointment and jurisdiction of, 409, 410
mayor as returning officer, 260, 340, 357
election of, 352, 353
Lord Mayor of London, 394
notice of hearing of election petition to, 438, 439
penal action against, 538
"mayor's auditor," 355
mayoralty, payments and expenses of candidate for, 353
medical relief, effect of receipt of, on franchise, 142, 183, 192
meeting, public, disturbance at, during election, 300
member of Parliament, certificate of return of, 331
false and double returns, 332
death of, 257
disabilities of, 218, 219, 442
mens rea, necessity for, in personation, 292, 293
messengers, employment and payment of, 268, 269, 300, 341
metropolis, arrangement of lists of voters in, 242
elections in, 393—397
boards of guardians, 397
corporation of City of London, 394, 395
general principles, 393, 394
London County Council, 397
metropolitan borough councils, 395—397
municipal franchise in, 190
metropolitan borough councils, election petition in case of, 500, 501
elections in, 395—397
minister, dissenting, qualification of, for county franchise, 150
ministers of religion as county aldermen, 361
misconduct in polling station, 321, 534
misdemeanour, effect of, on right to vote, 141
misdemeanours, indictable, 528—532
misdescription in list of voters, 200, 206, 208, 209
misfeasance by public officers, 537
mistake by returning officer, effect of, 261
in lists of voters, correction of, by revising barrister, 223
mortgagee, qualification of, for county franchise, 150
mortgagor, qualification of, for county franchise, 150, 151
municipal borough, election of councillors of, 182—190
burgess, for municipal elections, meaning of, 182
personal qualification of, 182—184
property qualifications of, 184—189
in the metropolis, 190
municipal elections, conduct of, 338—398

ELECTIONS—*continued.*
municipal elections, conduct of—*continued.*
authorised excuses for corrupt and illegal practices in, 407, 408
election of aldermen in municipal corporations, 354, 355
board of guardians, 389—392
chairman of board of guardians, 393
county council, 359, 360
parish council, 389
rural district council, 382
urban district council, 375, 376
councillors in municipal corporations, 339—352. *See* councillors, election of.
of county council, 356—359
parish council, 382—389. *See* parish council etc.
rural district council, 376—382. *See* rural district council etc.
urban district council, 361—375. *See* urban district council etc.
county aldermen, 361
elective auditors in municipal corporation, 355, 356
mayor, 352, 353
elections in metropolis, 393—397. *See* metropolis, elections in.
university elections, non-parliamentary, 398
municipal election list, 499
meaning of, in special cases, 499, 502, 503
elections, franchise for, 182—193. *See* franchise etc.
music, illegal payment for, at election, 301, 347
name of printer etc. to be on municipal election bills, 348
names of voters, arrangement and numbering of, 237, 242, 243, 245
double entry of, 234—236
expunging of, 232, 234, 237
wrongful use of, 292, 293
naturalisation certificate, production of, on hearing of election petition, 458
effect of, on right to vote, 140
new lodger list, preparation of, 204
nomination of municipal candidate for board of guardians, 391
rural district councillorship, 378, 379
urban district councillorship, 364—368
in general, 342—344
parliamentary candidate, 273—278
charges and expenses of returning officer, 277
declaration of election when no opposition, 275
essentials to validity of, 273—275
interruption at, 277
nomination papers, provision of, 273
objections to, 276
persons present at, 275
publication of name of nominated candidate, 276
university elections, in case of, 278
withdrawal of candidate, 276
paper, criminal offences connected with, 530—532
for election of parish councillor, 383, 384
rural district councillor, 378
urban district councillor, 364, 365, 367
objection to, 276
Nonconformist minister, qualification of, for county franchise, 150
non-resident freemen, revising barrister's duty in respect of, 237
list, preparation of, 205
Norwich, freeholders and burgage tenants in, 179, 180
notice by overseers before preparation of lists of voters, 196—199
respondent to municipal election petition, 497
of appeal against report of election commissioners, 470
revising barrister, 249, 251
claims of voters, 205—209, 228
disqualification of candidate, 305, 306
holding of court by revising barrister, 220
intention not to oppose election petition, effect of, 416
interlocutory proceedings in municipal elections, 506
judgment of court on appeal from revising barrister, 256

ELECTIONS—*continued*,
notice of meeting etc. of election commissioners, 465
municipal election, 340
nomination for board of guardians, 392
of rural district councillors, 378, 379
objection to lists of voters, 209—217. *See* lists of voters, objection to.
parish meeting to elect parish councillors, 383
parliamentary election, 261—263
poll in municipal election, countermanding of, 350
parliamentary election, 305
preliminary objection to appeal from revising barrister, 254
presentation of municipal election petition, 498
parliamentary election petition, 418, 419
proposal to expunge name by revising barrister in certain cases, 234
result of election of rural district councillors, 381, 382
urban district councillors, 374, 375
trial of municipal election petition, 513
parliamentary election petition, 438, 439
withdrawal of candidate for post of urban district councillor, 366
to produce and admit, 429, 511
notices, destruction of, 537
mode of publication of, 199, 200
service of, 430
See also publication.
Nottingham, freeholders and burgage tenants in, 179, 180
numbering of names on register, 242, 243, 245
oath, administration of, before revising barrister, 222, 231
to voters, 319, 322
"objected," addition of, by overseers to name on list in certain cases, 202, 204
objection before revising barrister, costs of unreasonable etc., 238, 239
notice of etc., 229, 230
proof in support of, 230—232
to entry of name on list of voters, 209—217. *See* lists of voters
nomination papers for councillors' election, 343
overseers' account of expenses of registration duties, 240
occupation by servant, effect of, 152, 153
franchise, 155—162
boroughs, 158—162
essential requirements, 158, 159
estate, occupier must have some, 162
joint and successive occupiers, 159
meaning of "occupy," 161, 162
"tenement," 160
nature of qualification, 159—161
value, mode of estimating, 161
claim for, before revising barrister, 228, 229
counties, 156, 157
occupier, inhabitant, distinction between lodger and, 168, 169
qualification of, 163 *et seq.*
occupiers list, notice of claim in respect of, 207
preparation of, 203, 204
office, franchise by occupation of, in borough, 158
occupation by virtue of, franchise by, 172—174
of election agent or sub-agent, 267, 268
officer, presiding. *See* presiding officers.
registration, duty of, 194
old-age pensioners, right of, to vote, 143
old burgess franchise, 184—188
lodger list, preparation of, 204
opposition. *See* objection.
Order in Council, alteration of precept etc. by, 195
number of revising barristers may be altered by, 217
order of candidate, illegal practice contrary to, 398, 399
names in register, 242
polling districts, 243
"ordinary election" of board of guardians, 390
urban district councillors, 361, 362
outlaw cannot be registered, 141
overseers, attendance and duties of, before revising barrister, 221, 222, 231

ELECTIONS—*continued.*
overseers, duties of, relating to election of parish councillors, 382, 383
payments of expenses of election commissioners, 481—483
registration, 194, 201—205
account and allocation of expenses, 239—241
delivery of lists, 217, 221
notice of objection to list, 210
preliminary inquiries and notices, 196—199
misfeasance by, 537
notice to and by, of result of election of rural district councillors, 382
revising barrister may name as respondents to appeal, 250, 252
summary jurisdiction over, 532
owner of dwelling-house, qualification of, 163
ownership franchise for counties, 145—155
by *cestui que trust*, 150
clergy, 149, 150
co-owners, 152
copyholders, 153, 154
leaseholders, 154, 155
mortgagee, 150
mortgagor, 150, 151
owners of estates for life, 146, 147
facts constituting estate for life, 148
frechold estate of inheritance, 145, 146
in case of clergy, 149, 150
land in boroughs, 152, 153
rentcharge, 147
trustee, 150
fraudulent conveyances to create, 153
hospitals, by inmates of, 148
land in boroughs, no qualification by, 152, 154, 155
yearly value, mode of fixing for purposes of, 150, 151
list, misdescription in, 206
preparation of, by overseers, 201, 202
Oxford, city of, qualification for burgess of, 188, 189
University of, election writ relating to, 258
franchise of, 181, 182
notice of election for, 262, 263
parish council, election of chairman of, 389
councillors of, 382—389
avoidance of election by bribery etc. 387
casual vacancies, 382
chairman's certificate, 387
publication of, 388
declaration of election, 385, 387
result of poll, 389
electors, 191, 192
nomination papers, 383, 384
order of business, 386
parish meeting, 383
poll, 386, 388
returning officer, 382, 383
voting, 385, 386
withdrawal of candidate, 385, 388
meeting for election of parish councillors, 383
Parliament, committees of, former judicial proceedings by, 135, 136
member of, cannot be revising barrister, 218, 219
parliamentary borough, returning officer for, 259
"parliamentary common law of agency," candidate's liability under, 269—272
parliamentary election, conduct of, 257—338
appointment of assistants etc., 268
canvassers, 272, 273
election agent, 266, 267
polling agents, clerks etc., 268, 269
sub-agents, 267
unpaid workers, 269, 270
candidates, 264—266
commencement, 263, 264

ELECTIONS—*continued.*
parliamentary election, conduct of—*continued.*
corrupt practices, 281—293. *See* corrupt practices etc.
counting the votes, 326—329
declaration of result, 331
disposal of ballot papers, 329—331
expenses of candidate, return and declaration of, 335—338
returning officer, 333—335
freedom of, 278—281. *See also* corrupt practices.
illegal hiring, 303, 304
payments, 300—303
practices, 293—300. *See* illegal practices.
nomination, 273—278. *See* nomination etc.
notice of election, 261—263
poll, 305—326. *See* poll.
return of member elected, 331—333
returning officer, 258—261
writ, 257
parochial electors, register of, 246
franchise, 191, 192
relief, effect of, on right to vote, 142—144, 183
list of persons receiving, to be ascertained, 198, 199
particulars in municipal election petition, 506, 507
parliamentary election petition, 423—425
paupers, disqualification of, for voting, 142
payment, illegal. *See* illegal payment.
of election expenses, time for, 298
to be through election agent, 297, 298
payments by candidate for mayoralty, 353
office of alderman, 355
chairman of county council, 360
county alderman, 361
elective auditor, 356
peer as county alderman, 361
disqualification of, for parliamentary franchise, 140
qualification of, for municipal franchise, 183
penal actions, 537—539
servitude, effect of, on franchise, 141
penalty. *See* punishment.
pensioners, old-age, right of, to franchise, 143
perjury at municipal election petition, 514
incapacity by reason of, 525
parliamentary election petition, 440, 450, 451
incapacity by reason of, 486
before election commissioners, 467, 468, 471
false testimony created, by statute, 531
personal expenses of candidate, 295, 301
qualifications for parliamentary franchise, 139 *et seq.*
personation agents, 321
as corrupt practice, 292, 293
criminal offence, 525—528
avoidance of municipal election by, 345
disqualification of parish councillor by, 387
no relief to candidate in case of, 399
striking off vote for, 455
petitions in municipal elections, 486—525
commissioner and his jurisdiction, 486—491. *See* commissioner for municipal etc.
costs, 520—523
death of petitioner or respondent, 508, 509
dismissal of, 508
disqualification of individuals, 524, 525
hearing, 512—518. *See* hearing of municipal election petition.
in general, 138
interlocutory proceedings, 505—512. *See* interlocutory proceedings etc.
judgment and its effects, 518, 519
presentation, 491—504. *See* presentation etc.
recriminatory case, 507
withdrawal of, 509, 510
fraudulent, 530

ELECTIONS—*continued.*
petitions in parliamentary elections, 408—486
costs, 472—483. *See* costs etc.
death of petitioner or respondent, 435
dismissal of, 436
disqualification of individuals, 483—486
dissolution before hearing, 422, 435, 436
election commissioners, 463—472. *See* election commissioners.
judges, appointment of, 408
expenses of, 411
jurisdiction of, 410, 411
rules by, 408, 409
hearing, 437—460. *See* hearing etc.
in general, 137, 138
interlocutory proceedings, 422—437. *See* interlocutory proceedings etc.
judgment and its effect, 460—463
action by House of Commons, 463
disagreement of judges, 460, 461
liability of returning officer, 463
report to Speaker and Attorney-General, 460—462
master of Supreme Court, appointment of, 410
jurisdiction of, 409, 410
presentation of, 411—419. *See* presentation etc.
registrar, appointment and duties of, 410
roll of agents, 410
security for costs, 419—422
statement of special case, 436, 459
appeal from, 437
substitution of petitioner, 433, 434
withdrawal of, 431—435. *See* interlocutory proceedings.
fraudulent, 530
pew rents, qualification for county franchise by receipts of, 149
placard, municipal election, name of printer etc. to be on, 348
place of parliamentary election, 262
police constable, certificate enabling, to vote at special station, 311
political associations, agency of, 272, 273
poll books, delivery of, to registrar of election court, 439
illegal payments for conveyance to, 293, 294
municipal, for election of board of guardians, 391, 392
county councillors, 359
parish councillors, 386, 388, 389
rural district councillors, 379, 380
urban district councillors, 368—373
in general, 349—351
parliamentary, 305—326
adjournment of, 307
ballot-boxes, 311, 316
paper, 312, 313, 316
blind voters etc., 317
day of, 307
death of candidate before, 307
directions to voters, 315
hours of, 313
illiterate voters, 317
interruption, 307
Jewish voters, 317
misconduct in polling station, 321
non-compliance with rules, effect of, 322
notice of, 305
disqualification of candidate, 305, 306
oath to voters, administration of, 319, 322
personation agents, 321
persons entitled to voting paper, 313—315
polling districts, and polling places, 308, 309
stations, 309, 310
compartments of, 310, 315
voter to vote at proper, 311, 315
exception for constables, 311
presiding officer and clerks, 316, 321

ELECTIONS—*continued.*
poll, parliamentary—*continued.*
questions to voters, 319
sealing and custody of ballot-boxes, 320
secrecy of ballot, 318, 319
spoilt ballot papers, 319, 320
tendered ballot papers, 317, 318
university elections, 322—326
mode of election and of voting, 323
objections to voting papers, 325
place of election, 323
time of election, 325
voting by proxy, 324, 325
voting, 317
polling agent at municipal election, 341, 372
parliamentary election, 268
illegal payment for, 300
booths, use of, 310
districts, arrangement of, 243
for election of board of guardians, 392
rural district councillors, 378, 379
urban district councillors, 369, 370
parliamentary, 308, 309
places, municipal, 340, 371
parliamentary, 309
stations, 309, 310
misconduct in, 321, 534
possession, no occupation franchise by mere, 159
post, service of notices etc. by, 214, 430
poster, election. *See* bill.
postmaster, publication by, of notice of election, 261
misfeasance by, 537
post office, publication of documents in or near, 199
precepts, meaning etc. of, 195, 196
preparation of lists of voters, 193—217
freemen, list of, 202
inquiries and notices by overseers, preliminary, 196—199
lists required, enumeration of, 200, 201
necessity for registration, 193
new lodger list, 204
non-resident list, 205
notice of claims, 205—209
objection, 209—217. *See* lists of voters, objection to.
occupiers list, 203, 204
old lodger list, 204
ownership list, 201, 202
precepts, 195, 196
publication of notices, lists, and registers, 199, 200
reserved rights list, 203
presentation of petition in municipal election, 491—504
amendment, 494
City of London elections, 499, 500
computation of time, 504
county council elections, 499
elections under Local Government Act, 1894...503, 504
form and contents of petition, 493
grounds for, 492, 493
guardians of poor law union, in case of, 503
mandamus, 504
meanings of terms in special cases, 502, 503
metropolitan borough councils, 500, 501
mode of, 493
municipal election list, 499
notice of address of agent etc., 496
parish councils, 501, 502
persons entitled to present, 492, 493
petition at issue, 499
respondent, 496
notices by, 497

ELECTIONS—*continued.*
presentation of petition in municipal election—*continued.*
security for costs, 494, 495
by recognisance, 498
payment out of deposit, 495, 496
service of notices, 496—498
time for, 493, 494, 499
urban and rural district councils, 501, 502
presentation of petition in parliamentary election, 411—419
agent of petitioner or respondent, notice of appointment of, 419
amendment of petition, 413
cases in which allowed, 411
form of petition, 415
mode of, 412
notice of, 418, 419
address for service, 415, 416, 418
persons who may present, 411, 412
respondent, 416, 417
time for, 412—414
preserved rights of franchise. *See* reserved rights.
presiding officer at poll at election of rural district councillors, 379
urban district councillors, 372
parliamentary election, 316, 321
misfeasance by, 538
printer etc., name of, on election bills, 296, 297, 348
printing of register, 241, 242, 245
privilege of election commissioners, 472
solicitor or agent for party to election petition, 467, 468
witness at election petition cannot claim, 450
production of documents and telegrams at election petition, 452
proof in support of objections before revising barrister, 230—232
of bribery, 286—288
notice of claim for franchise, 228
tenancy agreement, qualifying for household franchise, 166, 167.
See also evidence.
property qualification for franchise. *See* freehold; occupation; ownership; lodger etc.
prosecution for personation, 525—528
protection of election commissioners, 472
proxy, voting by, at university election, 324, 325
public elementary school, use of, as committee room, 304
meeting, disturbance at, during election, 300
place, publication of notices etc. in, 199
Public Prosecutor and public prosecutions. *See* Director of Public Prosecutions.
publication of list of disfranchised persons, 196
municipal election petition, 493
nominations, 344
names and addresses of election agent and sub-agents, 267
of nominated candidate, 276
notice of election, 261
hearing of election petition, 438, 439
notices etc., mode of, 199, 200
result of poll for parish councillor, 389
urban district council election, 374, 375
summary of candidate's election expenses, 338
See also notice.
publisher, name of, on election bills, 296, 297, 348
punishment for corrupt practice, 529, 535
illegal practice, 535
non-compliance by election agent with High Court's order, 532
offences connected with ballot papers etc., 530, 531
personation, 528
purchases, colourable, as bribery, 287, 288
qualifications, expunging of name for insufficient, 232
of aldermen, 354, 361
county councillors, 356
mayor, 353
urban district councillors, 364
questions to voters, 319, 372

ELECTIONS—*continued.*
quorum at election of chairman of urban district council, 375
rate-book, mode of keeping, 170
order of names in register according to, 204, 242, 246
rates, bribery by corrupt payment of, 286
medical relief out of, effect of, on franchise, 142
not "charges" for purpose of assessing value of property in certain cases, 151
payment of, as condition of franchise as freeman or liveryman of City of London, 181
household franchise, 163, 165, 170—172
municipal franchise, 187, 188
occupation franchise, 156, 157, 162
in case of service franchise, 174
preparation of list of persons in default in respect of, 197, 198
ratification by candidate of act of agent, 271, 273
receipts from sale of copies of register, account of, 246
recognisance, security by, for costs of municipal election petition, 494, 498
parliamentary election petition, 419—421
recognisances, forfeiture of, in municipal election petition, 521, 522
parliamentary election petition, 480
recorder, revising barrister may be, 219
recount in municipal election petition, 512
parliamentary election petitions, 427, 428, 458, 459
recriminatory case in municipal election petition, 507, 516, 517
parliamentary election petitions, 427, 453, 454
re-election of retiring urban district councillors, 367
Reform Act, 1832, reservation of rights existing at. *See* reserved rights.
refreshments, provision of, may be corrupt practice, 290, 291
use of room for sale of, as committee room, 304, 348
register of voters, 241—248
alteration of, after appeal from revising barrister, 257
compilation of, after revision, 241—244
conclusiveness of, 455
meaning of, in municipal election, 350
mode of publication of, 199, 200
notice in counties to persons desiring to be placed on, 199
parliamentary register, 244
registers of county electors and burgesses, 244—248
registrar for parliamentary election petitions, 410, 439
examination on commission before, 430, 431
of births and deaths, duties of, 198
registration, account of overseers' expenses relating to, 239—241
necessity for, 139, 193. *See also* register of voters; preparation of lists; revising barrister.
officer, duty of, 194
rejected ballot papers, 328, 329
inspection of, 330
rejection of votes for parliamentary candidate, 327, 328
relief against corrupt and illegal practices. *See* authorised excuses etc.
remitting case to revising barrister, 254
rentcharge, qualification for county franchise by, 147
report by election commissioners, 468, 469
effect on persons reported, 471
hearing of, and appeal by, person reported, 469, 470
laying of, before Parliament, 470
on municipal election petition, 518, 519
parliamentary election petition, 460—462
withdrawal of election petition, 435
special, by election court, 519
Representation of the People Act, 1832. *See* reserved rights.
representative. *See* agent.
reservation of question of law in municipal election petition, 489, 512, 517
parliamentary election petition, 459
reserved rights, no application to municipal franchise, 189
notice of claim by person having, 208
of franchise in boroughs, 171—180
City of London, 181
counties, 177
preparation of list of persons having, 203

ELECTIONS—*continued.*
residence, declaration of, in lodger's claim to vote, 207
for purposes of occupation franchise in boroughs, 156, 157
respondent as witness at election petition, 451, 452
persons liable to be made, to appeal from revising barrister, 250
municipal election petition, 496, 497
parliamentary election petition, 416, 417
to parliamentary election petition, effect of death of, 435
result of rural district council election, declaration of, 381, 382
urban district council election, declaration of, 374, 375
"return book," 331, 333
return of deaths to overseers of parish, 198
election expenses, authorised excuses for irregularity in, 405—407
failure to make, 298
of municipal candidate, 351
parliamentary candidate, 335—337
inspection and summary of, 338
member of Parliament, 331
false and double returns, 332
names of elected county councillors, 359
returning officer, adjournment of nomination by, 277
poll by, 307
as respondent to petition, 417
casting vote of, 328
charges and expenses of, 277, 333—335
not included in maximum expenditure allowed, 295
costs of, 476, 521
disqualification of, for voting, 145
duties of, relating to counting of votes, 326—329
disposal of ballot papers, 329
personation, 526, 527
poll, 307, 315, 316. *See also* poll.
polling stations, 309, 310
for and duties at election of board of guardians, 390, 391
borough councillors, 340
county councillors, 357
parish councillors, 382, 383
rural district councillors, 377, 381
urban district councillors, 362, 365, 371, 372
parliamentary election, 258—261
liability of, civil, 312, 335, 463
criminal, 530, 531
to penal action, 537, 538
meaning of, in special cases, 502
misfeasance by, 537, 538
notice of poll by, 305
provision of ballot boxes etc. by, 311
nomination papers by, 273
revising barristers, 217—241
adjournment of court by, 221
appeals from, 248—257. *See* appeal from etc.
effect of, on order as to costs, 239
appointment of, 217—219
notification of, 219
as judges of fact, 142, 169, 172, 189
correction of mistakes, 223 *et seq.*
corrupt practices list, duty in respect of, 232
costs, jurisdiction over, 238, 239
deputies for and additions to, 219
double entries, duties with regard to, 234, 235
method of selection, 235, 236
expenses, certificate by, for certain, 239—241
expunging of name, notice of proposal for, in certain cases, 234
of deceased persons by, 232
incapacitated persons by, 233
insufficiently described persons by, 233
qualified persons by, 232
fines by, 239

ELECTIONS—*continued.*
revising barristers—*continued.*
frivolous and vexatious proceedings before, 238
holding of court, 220—223
adjournment, 221
evidence, 222
procedure and regulations, 222, 223
time and place of sittings, 220, 221
illness of, 219, 221
judges with power to appoint, 218
lists, initialling, signing, transmission etc. of, by, 237, 238
to be delivered to, 221
misfeasance by, 537, 538
non-resident freemen, duty in respect of, 237
notice of objections, 229, 230
failure of appearance to support objection, 234
oath, administration of, before, 222, 231
opposition to claim before, 229
placing of name in proper division by, 237
polling place, claim to vote at particular, 236, 237
proof in support of objection, 230—232
of claim, 228, 229
notice of claim, 228
qualification, 218, 219
summary jurisdiction of, 532
valuation of house or tenement by, 159
lodgings by, 175, 176
variation in number of, 217
revision of lists of voters. *See* revising barristers.
revocation of appointment of election agent and sub-agent, 267
rewards for evidence for election petition, offer of, 448
ribbons, illegal payment for, at election, 301, 347
riot at nomination of candidate, effect of, 277
poll, 307
roll of parliamentary agents, 410
rota of judges for election petition, 408
effect of expiration of, 439
rule committee for parliamentary election petitions, 409
for mandamus against revising barrister, 254, 255
rules for municipal election petitions, 492
parliamentary election petitions, 408, 409
non-compliance with, at election, 322
rural and urban district councils, distinction between, 192
district council, election of chairman of, 382
councillors of, 376—382
combinining election of parish councillors with, 378
counting votes, 381
day of election, 377
declaration of result, 381, 382
method of election, 376
nomination, 378, 379
poll, 379—381
polling districts, 378
returning officer, 377
petition in case of, 501, 502
sanction of candidate, effect of absence of, to certain acts, 398, 399, 407
scale of expenditure allowed at election, 295, 296
schoolroom, use of, as committee room, 304
for purposes of poll, 310, 358, 367, 368
scrutiny in municipal election petition, 517
parliamentary election petition, 454, 455
costs of, 473
sea, conveyance of electors by, 294, 295
sealing of ballot-boxes etc., 320
papers after counting, 329
during interval of counting, 326, 327
secondary, attendance of, at revising barrister's court, 221
issue of precepts by, 202

ELECTIONS—*continued.*
secondary, misfeasance by, 537
notice to, of claims by liverymen, 203
secrecy of ballot, 318, 319
Secretary of State, copy of register for, 244
security for charges of returning officer, 277
costs of certain prosecutions, 529
municipal election petition, 494, 495, 501
parliamentary election petition, 419—422
servant, occupation by, 152, 153, 159—161
service franchise, 172—174
no application to municipal boroughs, 189
occupation by, 168
of notice of objection to voter, 214, 215
notices etc. in election petition, 430
sheriff as returning officer of county, 258
notice of hearing of election petition to, 438, 439
sheriffs, election of, in City of London, 394
misfeasance by, 537, 538
shorthand writer, at examination on commission, 431
municipal election petition, 514
parliamentary election petition, 440
show of hands, election by, 323, 386
solicitor, corrupt practice by, 471, 485, 525
for party to election petition, privilege of, 467, 468
speaker, issue of warrant for bye-election by, 257
report to, by judges after hearing of election petition, 460—462
special case, statement of, in municipal election petition, 512
parliamentary election petition, 459
report by election court, 519
spoilt ballot papers, 319, 320
stabling horses, payments for, for conveyance to poll, 294
staff of commissioner for municipal election petitions, 489, 490
statement by voters as evidence, 445
false, as to character or conduct of candidate, 298—300
withdrawal of candidate, 296, 347
injunction against, 540
statutory, as corrupt practice, 293
of candidate's expenses by election agent, 335—337
inspection of, 338
case by revising barrister, 249, 250
special case in municipal election petition, 512
parliamentary election petition, 459
statutory declaration of secrecy of ballot, 318
notice of appeal from revising barrister, 249
statement, false, a corrupt practice, 293
streets, arrangement of register according to, 242
burgess roll according to, 246
studio, franchise by occupation of, in borough, 158
sub-agents, election, appointment of, 267
fine against, 532
sub-lessee, qualification of, for county franchise, 155
successive occupation, effect of, on occupation franchise in boroughs, 157
sufferance, tenancy on, qualification for franchise by, 161, 167
suffrage. *See* franchise.
summary jurisdiction over offences, 532—535
summons, service of, in election petition, 430
Sunday, candidate may not be nominated on, 277
exclusion of, in calculations of time, 262, 414, 427
service of notice of voter's claim on, 205
supplemental lists of voters, 243
sureties, entry of recognisance by, in case of election petition, 419, 420
taxation of costs of election petition, 478, 521
expenses of returning officer, 334
taxes, inspection of assessments to, by overseers, 198
payment of, as condition of occupation franchise, 156
telegrams, production of, at election petition, 452
tenancy at will or sufferance, franchise by, 161, 167
tenant in common, qualification of, for county franchise, 152

ELECTIONS—*continued.*
tenant of dwelling-house, qualification of, 163 *et seq.*
"tendered ballot paper" and "tendered votes list," 317, 318
tenement, meaning of, for purposes of occupation franchise in boroughs, 158, 159
"ten pounds occupation franchise," 155, 188, 189
time, computation of, in certain cases, 504
exclusion of Sundays etc., 262, 414, 427
for payment of election expenses, 298
of parliamentary election, 262
payments after proper, in parliamentary election, authorised excuses for, 404
tithe rentcharge, qualification for county franchise by, 147
title, court will not decide questions of, in granting occupation franchise, 160
torches, illegal payment for, at election, 301, 347
town clerk, account by, of sales of copies of register, 246
attendance of, at revising barrister's court. 221
costs against, on appeal from revising barrister, 255
delivery by, of abstract of claimants etc. to revising barrister, 219
list of burgesses to clerk of county council, 245
precepts to overseers, 195
register to returning officer, 244
to, of ballot papers, 350, 351
lists by revising barrister, 237, 238
voting papers, 355
duties of, relating to nomination of municipal candidate, 342—344
payment of expenses of election commissioners, 481—483
expenses and payment of, 247, 248
list of freemen to be added to list of voters by, 243
making of burgess roll by, 246
misfeasance by, 537
notice by, of municipal election, 340
to, of appointment of revising barrister, 219
claim by freeman, 208
judgment on appeal from revising barrister, 256
preparation by, of list of freemen, 202
publication by, of municipal election petitions, 493
return to, of municipal candidate's expenses, 351
revising barrister may name as respondent to appeal, 250, 252
hall, publication of notices etc. on, 199, 340, 344
travelling expenses, payment of, as bribery, 288, 289
treason, conviction of, effect of, on right to vote, 141
Treasury, payment by, and repayment to, of costs of Director of Public Prosecutions, 521
expenses of municipal election petitions, 490, 491, 523
parliamentary election petitions, 481—483
treating as corrupt practice, 289—291
authorised excuse for, in parliamentary election, 398, 399
avoidance of municipal election by, 345
parliamentary election by, 279, 280
disqualification of parish councillor by, 387
striking off vote for, 455, 456
trial of petition. *See* petitions.
triviality of corrupt or illegal practice, effect of, 398, 399
trustee not qualified as such for county franchise, 150
under-lessee, qualification of, for county franchise, 155
under-sheriffs, misfeasance by, 537, 538
undue influence as corrupt practice, 291, 292
authorised excuse for, in parliamentary election, 398, 399
avoidance of municipal election by, 345
instances of, 279
striking off vote for, 455, 456
United Kingdom, candidate out of, withdrawal of, 276
nomination as councillor of person absent from, 344
universities, franchise for, 181, 182, 192, 193
university elections, custody etc. of voting papers used at, 331

ELECTIONS—*continued.*
university elections, direction of writ in, 258
nomination at, 278
non-parliamentary, 192, 193, 398
notice of, 262, 263
poll at, 322—326. *See* poll.
unpaid workers at municipal elections, 341, 342
parliamentary elections, 269—272
unreasonable objections before revising barrister, costs of, 238, 239
urban and rural district councils, distinction between, 192
district council, election of chairman of, 375, 376
councillors of, 361—375
bye-election, 362
corrupt and illegal practices, 368
counting votes, 373, 374
day of election, 363
declaration of result, 374, 375
electors, 362
expenses, 363, 364
freedom of election, 368
nomination, 364—368
notice of election, 363
"ordinary" election, 361, 362
poll, 368—373
returning officer, 362, 363
workers and agents, 364
petition in case of, 501, 502
vacancies, casual. *See* casual vacancies; bye-election.
value of lodgings, mode of estimating, 175, 176
premises, mode of estimating, 159
yearly, mode of estimating for purposes of county franchise, 150, 151
vexatious proceedings before revising barrister, 238, 239
vice-chairman of county council, 360
rural district council, 382
urban district council, 376
vice-chancellor of certain universities, election writ to be directed to, 258
void ballot paper, 313
contracts, 333
election through bribery, 286
corrupt or illegal practices, 483, 484, 524, 525
corruption, 279, 345
equality of votes, 455
fraud of agent, 293
illegal issue of writ, 257
incorrect ballot paper, 312, 313
intimidation, 280
irregularities, 322
wrong person acting as returning officer, 260
vote, evidence of, at election petition, 454
witness not compelled to disclose his own, 449, 450
voters, administration of oath to, 319, 322
arrangement of names of, in register, 242
directions to, 315
false answer by, to certain questions a criminal offence, 530, 532
incapable, 317
lists of, mode of printing, 243, 244
preparation of. *See* preparation etc.
meaning of, in special cases, 502, 503
notice of claims of, 205—209
questions to, 319
registration of. *See* register of voters; preparation of lists etc.; revising barristers.
statements by, as evidence, 445
supplemental lists of, 243
votes by paid electors as criminal offence, 530
counting of, at election of board of guardians, 392
rural district council, 381
urban district council, 373, 374
parliamentary election, 326—329

ELECTIONS—*continued.*
votes, objections to, 426, 454, 506, 507
procuring of improper, in municipal election, 347
recount of, 427, 428, 458, 459
rejection of, for parliamentary candidate, 327, 328
scrutiny of, 454, 455
striking off, on petition, 455—458
See also poll; franchise.
vouchers for expenses, 334, 351
wager on result of election, 289
ward roll in force on day of municipal election, 344
wardmotes, electors of persons elected in, 190
wards, electors for guardians of, 192
separate election of councillors for separate, 339
warrant, issue of, by election court, 536
wife of candidate may be agent, 271
withdrawal of candidate for parish councillorship, 385, 388
urban district councillorship, 366
municipal candidate, 344, 388
corruptly procuring, 347
false statement as to, 347
election petition, 509, 510
fraudulent, 530
notice of objection to voter, 216
parliamentary election petition, 431—433
fraudulent, 530
candidate, 265, 276
corruptly procuring, 301
false statement as to, 296
witnesses at hearing of municipal election petition, 513, 514
parliamentary election petition, 440, 441, 448, 449
questions admissible, 449, 450
respondent as witness, 451, 452
before election commissioners, 466, 467
costs of, at municipal election petition, 520, 523
parliamentary election petition, 477, 478
examination of, on commission, 511, 512
woman as mayor, 353
women, disqualification of, for parliamentary franchise, 140
qualification of, for municipal franchise, 183
workers at municipal elections, 341, 342, 348
parliamentary elections, 268—273
canvassers, 272, 273
unpaid workers, 269—271
writ, election, offences in connection with, 531, 538
issue of, in parliamentary election, 257
yearly value, mode of, estimating, for purposes of county franchise, 150, 151

ELECTRIC LIGHTING AND POWER, 541—645
abatement of defects in undertakers' works, 602, 603
accidental damage to works of undertakers, 613
accidents, liability of undertakers for, 565
notice of, by undertakers, 615
accounts by undertakers, 604, 605
of local authorities, audit of, 554
acquisition of land, 568—570
by "power companies," 629
for generating station, 557
undertaking by local authority, 600—602
on revocation of special order, 603, 604
amalgamation of undertakings, effect of, on purchase by local authority, 602
apparatus, improper condition of, 591
property in, on consumer's premises, 614
supply of, to premises in London, 624
testing of, 606
appeal to Board of Trade by "power companies," 631
from requisition as to distributing mains, 587, 588
application of penalties, 611

ELECTRIC LIGHTING AND POWER—*continued.*
arbitration, determination by, of disputes as to compensation for damage by undertakers, 561
cost of removal of works and reinstatement of street, 604
exercise of certain powers by undertakers, 578, 580—582
price of compulsory purchase, 600, 637
testing stations, 606
use and control of electricity by consumer, 590—592
arbitrator, appointment and expenses of, 615
area of supply, 566, 567
definitions of, 550, 552
audit of accounts of local authorities, 554
undertakers, 605
authentication of documents, 608
orders of Board of Trade, 609
"authorised," definition of, 552
"authorised distributors," meaning of, in "Power Acts," 622
"authorised undertakers," meaning of, in London Electric Supply Act, 1908...619
"authorised undertakers," meaning of, in "Power Acts," 628
Board of Trade, annual report of, 645
appeal to, by "power companies," 631
on requisition for distributing mains, 587, 588
appointment of electric inspectors by, 605
authority by, to undertakers, to supply electricity outside area, 595
costs and expenses of, 609, 610
grant of Provisional Order by, 556—560
inquiries and consents by etc., 609, 610
by, into accidents, 615
jurisdiction of, over sale of undertaking, 601
powers of, in case of defect of works, 602, 603
regulations of, governing electrical undertakings, 545
"Board of Trade regulations," definition of, 551
publication of, 609
borrowing powers of local authorities, 553, 554
undertakers in London, 623
brackets for lighting street, fixing of, 642
breach of contract by undertakers, 592
bridges, use of, by undertakers, 573—575
bulk, supply of electricity in, 552, 557, 627
to other undertakers, 595
bye-laws by local authorities, 546, 641
canal, execution of works along, 578
injury to, by undertakers, 582
supply of electricity to, 557, 595
in London, 621
certified meters, 596
charges for supply by local authority, reduction in, 555
"power companies," 633, 634
undertakers for private purposes, 588, 589
public lamps, 594
recovery of, 599
to ordinary consumer, 593, 594
church, lighting of, a "public purpose," 547
cinematograph exhibitions, use of electricity in, 645
circuits, earthing of, 567
remedy of defects in, 602, 603
City of London, Corporation of, "local rate" of, 552
"local authority" in, 548
combination between undertakers forbidden, 562
Commissioners of Works, inspection of generating stations by, 565, 566
powers of, in case of nuisance, 622
"company," definition of, 549
compensation by undertakers for damage, 561
competition between authorised and unauthorised undertakers, 562
for Provisional Orders, 559

ELECTRIC LIGHTING AND POWER—*continued.*
compulsory purchase of undertaking, 637
works by undertakers, 586—588
conduits, laying down of, 573, 574
confirmation of Provisional Order, 559
confirming Acts, special clauses in, 638
connecting mains in London, powers for laying, 620, 621
consent of local authority to Provisional Order in certain cases, 558
consumer, control of supply by, 589
"consumer," definition of, 550
consumer, entry on premises of, 614
improper use of energy by, 591
notice of removal by, 598
"consumer's terminals," definition of, 550, 551
contract, breach of, by undertakers, 592
undertakers' right to, on requisition for distributing mains, 587, 588
contracts by local authorities, 561
copies of plans for Board of Trade, 610
Corporation of City of London as "local authority," 548
"local rate" of, 552
costs of Board of Trade, 609, 610
laying electric lines, 590
See also expenses.
"county council," definition of, 550
county council, notice to, of certain street works, 577
criminal offences, 612, 613
Crown rights, saving clause for, 612
cutting off of supply, 598, 613, 614
"daily penalty" definition of, 551
damage by undertakers, compensation for, 561
to undertakers' works, 612, 613
danger to public safety, remedy of, 603
default in required supply, 592
defects in works of undertakers, remedy of 602, 603
definitions in Acts relating to London, 618, 619
general Acts, 547—552
"power Acts," 628
"deposited map," definition of, 551
distress not available against undertakers' apparatus, 615
"distributing main," definition of, 550
distributing main, laying down of, 586, 587
dock, supply of electricity for, in London, 621
documents, authentication and service of, 608
drains, breaking up of, by undertakers, 573—575
duties of undertakers. *See* undertakers.
earthing of circuits, 567
easements, acquisition of, 557, 568
electric inspectors, appointment and duties of, 596, 597, 605
"Electric Lighting Acts," definitions of, 549, 552
"electric line," definition of, 548, 549
electric line, disconnecting for non-payment, 598
injury to, 612, 613
inspection and testing of, 605, 606
laying down of, 573, 574
property in, on consumer's premises, 614
remedy of defective, 602, 603
"electric main," definition of, in the London Electric Supply Act, 1908...619
electric main, laying of, in London, 621
signalling communication, injurious affection of, 582
supply company, meaning of, and rights of, as against undertakers, 581
"electrical stations," meaning of, 644
electrical undertakings. *See* undertakings.
"electricity," definition of, 548, 549
electrolysis, provision against danger from, 565
emergency, exemptions of undertakers in certain cases of 575, 577—581
"energy," definition of, 550
improper use of, by consumer, 591
mode of supply of, 567
entry on consumer's premises, 614

ELECTRIC LIGHTING AND POWER—*continued.*
equality of charges for supply of electricity, 589
evidence, observations of scientific instruments as, 606
of fraudulent use of electricity, 614
orders of Board of Trade, as, 609
execution not available against undertakers' apparatus, 615
of works, security for, 567, 568
expenses of Board of Trade, 610
electric inspector, 607
local authorities, 552—555
undertakers in London, 623
recovery of, 611
explosion, notice of, 615
extension of time for undertakers, 610
factories, use of electricity in, 644
fees, recovery of 611
fire, notice of, 615
fittings, improper condition of 591
property in, on consumer's premises, 614
forms of notices, 608
fraudulent use of electricity, 612—614
future Acts, application of, to Electric Lighting Acts, 612
gas company, meaning of, and rights of, as against undertakers, 581
undertakers, compulsory acquisition of land of, forbidden, 557
release of, from obligations in certain cases, 645
"general supply," definition of, 550
generating station, acquisition of land for, 557
"generating station," definition of, 552
generating station, erection of, 570
by "power companies," 629, 630
in London, 621, 622
generating stations, inspection of, 565, 566
highway authority, negligence by, 584
hiring of meters, 597
improper use of electricity, 612, 613
incoming tenant, liabilities of, 598
injunction against wrongfully discontinuing supply, 592
injury by undertakers, 565, 582
notice of, personal, 615
to undertakers' works, 584, 612—614
injurious affection of telegraphic line, 572, 582, 641
abatement of, 603
inquiries by Board of Trade into accidents, 615
compliance with regulations for public safety, 609
insolvency of undertakers, revocation of special order through defaults due to, 603
inspection of electric works, 605, 606
meter by undertakers, 597
inspector, electric, duties of, 596, 597
expenses of, 607
installations, private, 639, 640
instruments, observations of, testing of etc., 606, 607
insulation, 581
issue of stock by local authority, 554
joint exercise of powers of local authorities, 556
laboratories, interference with, 595
labouring class, acquisition of houses of, 569
lamp posts, fixing of, 642, 643
lamps, public, erection of, 573, 574
supply of energy to, 592
charges for, 594
wilful extinguishing of, 613
land, acquisition of. *See* acquisition of land.
"Lands Clauses Act," definition of, 549
letting of meters, 597
liability of members etc. of local authority, 607
undertakers. *See* undertakers.
"licence, order, or special Act," definition of, 549
licences, supply of electricity by, 544
light railway within definition of "railway," 551

ELECTRIC LIGHTING AND POWER—*continued.*
"lighting authority," definition of, in "power Acts," 628
lighting of streets, 642—644
local authorities, Acts, special clauses in, 638, 639
bye-laws by, 546, 641
contracts by, 561
immunity of members etc. of, 607
joint exercise of powers of, 556
notice to, of certain street works, 577
preference to, in competition for Provisional Order, 559
purchase by, of undertakings, 558, 600—602, 603, 604
receipts and expenditure of, 552—555
"local authority," definition of, 548
Local Government Board, jurisdiction of, over borrowing powers of local authorities, 553, 554
Loans Act, borrowing under, by local authority, 554
"local rate," definition of, 548
defrayment of local authority's expenses out of, 552
of various local authorities, 552, 553
London County Council as "local authority," 548
"local rate" of, 553
purchase of undertakings by, 624—626
"London Electric Supply Companies," meaning of, in the London Electric Supply Act, 1908...618
London, undertakings in. *See* metropolitan undertakings.
machinery, vibration from, 563
"main," definition of, 550
mains, distributing, laying of, 586, 587
electric, laying of, in London, 620, 621
testing of, 606
malicious injury to electric works, 612, 613
maps, publication of, by undertakers, 608
maximum charges of undertakers, 593, 594
power, 591, 592
meters, 596—598, 612, 613, 624
metropolis, "local authority" in, 548
metropolitan borough council as "local authority," 548
borrowing powers of, 553
"local rate" of, 553
street lighting by, 644
"local authority" in, 548
metropolitan undertakings, 616—626
Acts relating to, 618, 619
application of Electric Lighting Acts, 616
authorised undertakers and specified companies, agreements between, 619, 620
powers for carrying out agreements, 620, 621
borrowing powers, 623
changes of boundary, adjustments consequent on, 617
discharge of condensing water in sewers, 623
exemptions from building legislation, 623
expenses, 623
generating stations, 621, 622
nuisance, 622
premises with separate supply, 623
protective and saving clauses, 623, 624
Provisional Orders, 617
purchase by London County Council, 624—626
receipts, 623
supply of energy for power purposes, 621
supplying premises with fittings, 624
mines and minerals under electric line, working of, 585, 612
mode of supply of electric energy, 567
monopoly of Postmaster-General regarding telegraphic communication, 612
mortgage of undertaking, 563
navigation, supply of electricity for, in London, 621
negligence, liability of undertakers in absence of, 564
of highway authority, 584
persons carrying out works on undertakers' behalf, 579, 580
undertakers, 565

ELECTRIC LIGHTING AND POWER—*continued.*
non-payment of charges, cutting off light for, 598
recovery by undertakers in case of, 599
notice by undertakers before certain works, 575, 577, 582, 586
of accidents, 615
application for Provisional Order, 558
of approval etc. of Board of Trade, publication of, 610
connection or disconnection of meter, 597
purchase of undertaking by London County Council, 625
removal by consumer, 598
revocation of special Order, 603
notices, forms and service of, 608
nuisance, undertakers' liability for, 563—566
in London, 622
objections to breaking up of streets etc, 571
extension of time to undertakers, 610
generating stations, 570
method of charge by undertakers, 593
Provisional Order, 559, 560
obligations of undertakers. *See* undertakers.
observatories, interference with, 595
officers of local authority, immunity of, 607
"operators," meaning of, for purposes of certain street works, 579, 581
opposition to Provisional Order, 560. *See* also objections.
"order or special Act," definition of, 549
outgoing and incoming tenants, 598, 599
overhead lines or wires, 567, 571
in London, 641, 642
"owners," meaning of, for purposes of certain street works, 579, 581
parish council, street lighting by, 643
payment, cutting off light for failure to make, 598
for supply of electricity, security for, 591
penalties, recovery and application of, 610, 611
pillars, erection of, 573, 574
pipes in streets, alteration of position of, 579, 580
"plan," definition of, 551
plans, copies of, for Board of Trade, 610
Postmaster-General, interference with telegraphic line of, 572, 641
monopoly of, regarding telegraphic communication, 612
notice to, of certain street works, 577
regulation by, of private undertaking, 641
"power," definition of, 550
power, maximum, 591, 592
"Power Acts" and "power companies," 627—635
application for Provisional Orders, 634
of general legislation, 627, 628
contracts, 634
definitions, 628
incorporation of company, 628, 629
powers of company, 629, 630
prices and equality clauses, 633, 634
protective clauses, 635
supply of electricity, restrictions and obligations, 630—633
transfer of undertakings, 634
undertakings not purchasable by local authorities, 628
"power purposes," meaning of supplying energy for, 621
powers of undertakers. *See* undertakers.
revocation of. *See* revocation of special order.
preference, undue, in charge for supply of electricity, 589
"principal Act," definition of, 549, 550
private Bill, powers required to be conferred by, 557, 558
purposes, charges for supply of electricity for, 588, 589
"private purposes," definition of, 547
undertakings and installations, 639—642
"Provisional Order," definition of, 552
Provisional Order, grant of, 556—560
special clauses in, 635—638
public lamps. *See* lamps.
"public purposes," definition of, 547

ELECTRIC LIGHTING AND POWER—*continued.*
public safety, danger to, remedy in case of, 603
publication. *See also* notice.
publication of regulations of Board of Trade, 609
purchase of undertaking by local authority, 600—602
borrowing powers for, 554
on revocation of special order, 603, 604
London County Council, 624—626
special clause authorising, 636—638
Railway and Canal Commissioners, reference of differences to, 615
railway, breaking up of, by undertakers, 570, 576
"railway," definition of, 551
railway, execution of works along, 578
injuries to, by undertakers, 582
supply of electricity to, 557, 595
in London, 621
receipts of local authorities, 552—555
undertakers in London, 623
recertification of meters, 597
recovery of charges by undertakers, 599
penalties, 610, 611
reduction in charges of local authority, 555
regulations of Board of Trade, 545, 609
remedy of defects in works of undertakers, 602, 603
removal by consumer, notice of, 598
of works, 604, 640, 641
remuneration of electric inspectors and auditors, 605
report, annual, of Board of Trade, 645
requisition for distributing mains, 587
reserve fund of local authority, 555
revocation of special order by reason of combination between undertakers, 562
default in laying distributing mains, 586
of security, 567
failure to remedy defects, 603
supply of electricity outside area, 567
notice of, 603
road, breaking up of, Provisional Order authorising, 558
"road," definition of, 552. *See also* street.
rural authority, street lighting by, 642, 643
district council, borrowing powers of, 553, 554
"local rate" of, 553
districts, "local authority" in, 548
sale of undertaking. *See* purchase of undertaking.
saving clauses in Electric Lighting Acts, 612
sections of underground works, preparation of, 608
security by consumer for payment for supply of electricity, 591
price of certified meter, 597
"operators" for expenses of certain street works, 580
undertakers, application of, 604
duty to give and repayment of, 567, 568
method of giving, 609
"service line," definition of, 550
service line, laying down of, 573, 574
of notices and documents, 608
sewers, breaking up of, by undertakers, 573—575
discharge of condensing water into, in London, 623
sinking fund of local authority, 555
"special Act," definition of, 549
special legislation, 627—639
local authorities' Acts, 638, 639
Power Acts, 627—635. *See* power Acts.
Provisional Orders and confirming Acts, 635—638
"special order," definition of, 550
special order, revocation of. *See* revocation etc.
"specified companies," meaning of, in the London Electric Supply Act, 1908...618
specifications, copies of, for Board of Trade, 610
stamp duties on agreements for supply of electricity, 615, 616
stealing electricity, 614
stock, issue of, by local authority, 554

ELECTRIC LIGHTING AND POWER—*continued.*
street, breaking up of, under special powers, 573—579
alteration of pipes, wires etc. in, 579
boxes and ventilating apparatus, 576, 577
fencing and lighting, 575
notices and approvals, 575, 577, 578
power of certain persons to act on behalf of undertakers, 578, 579
reinstatement, 575
streets not repairable by local authority or county council, 578
undedicated streets, 574
without special power, 570, 571
"street," definition of, 549
street, lighting of, 642—644
subsidence of road, duties of undertakers in case of, 575
sub-stations in London for transformation of energy, 622
summons, form of, 611
service of, 608
supply of electricity by "power companies," restrictions and obligations as to, 630—632
cutting off, 598
within area of supply, 588—594
by agreement, 588
charges when supplied for private purposes, 588, 589
control by consumer, 589
cost of lines, 590
default in, 592
improper use by consumer, 591
maximum power, 591, 592
methods of charge, 593, 594
obligation to supply, 590
payments in arrear, effect of, 590
public lamps, supply of, 592
security for payment, 591
without area of supply, 595, 596
support for undertakers' works, 585
system of supply of electric energy, 567
"telegram," definition of, 549
"telegraphic line" definition of, 551
telegraphic line, injurious affection of, 582, 603
interference with, by undertakers, 572
telephonic line, injurious affection of, 582
tenants, outgoing and incoming, 598, 599
testing of consumer's apparatus, 606
electric works, 605, 606
meter by undertakers, 597
stations, 606
"the undertakers," definition of, 549, 551
theatres, lighting of, a "public purpose," 547
use of electricity in, 644
time, extension of, to undertakers, 610
"to supply electricity in bulk," definition of, 552
traffic, injury to undertakers' works by, 584
tramway, breaking up of, by undertakers, 570, 571, 576
"tramway," definition of, 551
tramway, execution of works along, 578
supply of electricity to, 557, 595
in London, 621
transfer of powers by undertakers, 562
undertaking, special clause authorising, 635, 636
tunnels, breaking up of, by undertakers, 573—575
railway, injury to, by undertakers, 582
unauthorised undertakers, 639, 640
competition by, 562
undedicated streets, works in, by undertakers, 574
undermining of pipes etc. by undertakers, 581
"undertakers," definition of, 552
undertakers, powers and duties of, 560—616

ELECTRIC LIGHTING AND POWER—*continued.*
undertakers, powers and duties of—*continued.*
accounts and audit, 604, 605
acquisition of land, 568—570
undertaking by local authority, 600—602
arbitration, 615
area of supply, 566, 567
supply of electricity within, 588—594. *See* supply of electricity etc.
without, 595, 596
Board of Trade proceedings, 609, 610
regulations, publication of, 609
combination between undertakers forbidden, 562
compensation for damage, 561
competition by unauthorised undertakers forbidden, 562
contract for execution and maintenance of works, 561
distress and execution, 615
entry on premises of consumer, 614
general powers, 561
generating stations, 570
injury to undertakers' works, 612—614
liability of members etc of local authority, 607
maps and sections, 607, 608
meters, 596—598
mortgage of undertaking, 563
notices, 608
of accidents, 615
nuisance, liability for, 563—566
property in undertakers' apparatus on consumers' premises, 614
recovery of charges, 598, 599
penalties, 610, 611
remedy of defect, 602, 603
revocation of powers, 603, 604
saving clauses, 612
security for execution of works, 567, 568
method of giving, 609
stamp duties on agreements for supply of electricity, 615, 616
stealing electricity, 614
system and mode of supply of electric energy, 567
testing and inspection, 605—607
transfer of powers forbidden, 562
works, 570—585. *See* works.
compulsory, 586—588
undertakings, 542—547
Board of Trade regulations, 545
bye-laws of local authorities, 546
Electric Lighting Acts, application of, 542—544
licences for supply of electricity, 544
metropolitan, 616—626. *See* metropolitan undertakings.
mortgage of, 563
not specially authorised, 639—644
Provisional Orders for, 544
urban authority, borrowing powers of, 553
"local rate" of, 553
street lighting by, 642, 643
districts, "local authority" in, 548
valuation of undertaking on purchase by local authority, 600
"value of the supply" meaning of, 596
vibration from machinery, 563
warrant, form of, 611
water company, meaning of, and rights of, as against undertakers, 581
undertakers, acquisition of land of, forbidden, 557
waterworks, supply of electricity for, in London, 621
wires in streets, alteration of position of, 579, 580
overhead, 567, 571
in London, 641, 642
supply of to premises in London, 624
works, 570—585
breaking up railways and tramways, 570, 571, 573—575
streets. *See* street.

ELECTRIC LIGHTING AND POWER—*continued.*
works—*continued.*
compulsory, by undertakers, 586—588
definition of, 548, 549
general and specific, 570
injurious affection of telegraphic or telephonic lines, 582
injury to, 612—614
by traffic, 584
bridges, 574
railway or canal, 582
inspection and testing of, 605, 606
insulation in certain cases, 581
interference with telegraphic line, 572
laying of lines etc. near other apparatus, 580, 581
of "power company," 630
overhead lines, 571
power of certain persons etc. to carry out on behalf of undertakers, 578, 579, 580
preliminary notices, 575, 577, 581, 582
removal of, on revocation of special order, 604
sale of, to defray expenses, on revocation of special order, 604
security for execution of, 567, 568
support for, 585
trenches and undermining, 580, 581
workshops, use of electricity in, 644

BRADBURY, AGNEW, & CO. LD., PRINTERS, LONDON AND TONBRIDGE.

309547 (Earl of and others (eds.) Law.D
Author Halsbury, Hardinge Stanley Giffard, 1st H196.z
Title The laws of England. vol.12.

DATE. NAME OF BORROWER.

University of Toronto
Library

DO NOT
REMOVE
THE
CARD
FROM
THIS
POCKET

Acme Library Card Pocket
LOWE-MARTIN CO. LIMITED